

FEDERAL MINE SAFETY AND HEALTH AMENDMENTS OF 1983

HEARING BEFORE THE SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1173

TO AMEND THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

JULY 26, 1983



Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1983

24-223 O

5541-35

COMMITTEE ON LABOR AND HUMAN RESOURCES

ORRIN G. HATCH, Utah, *Chairman*

ROBERT T. STAFFORD, Vermont
DAN QUAYLE, Indiana
DON NICKLES, Oklahoma
GORDON J. HUMPHREY, New Hampshire
JEREMIAH DENTON, Alabama
LOWELL P. WEICKER, Jr., Connecticut
CHARLES E. GRASSLEY, Iowa
JOHN P. EAST, North Carolina
PAULA HAWKINS, Florida

EDWARD M. KENNEDY, Massachusetts
JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
THOMAS F. EAGLETON, Missouri
DONALD W. RIEGLE, Jr., Michigan
HOWARD M. METZENBAUM, Ohio
SPARK M. MATSUNAGA, Hawaii
CHRISTOPHER J. DODD, Connecticut

RONALD F. DOCKEAL, *Staff Director*

KATHEYN O'L. HIGGINS, *Minority Staff Director*

SUBCOMMITTEE ON LABOR

DON NICKLES, Oklahoma, *Chairman*

JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
ORRIN G. HATCH, Utah
ROBERT T. STAFFORD, Vermont
JEREMIAH DENTON, Alabama

DONALD W. RIEGLE, Jr., Michigan
EDWARD M. KENNEDY, Massachusetts
JENNINGS RANDOLPH, West Virginia
SPARK M. MATSUNAGA, Hawaii

RICHARD C. LAWSON, *Cocounsel*

CARLEE T. CARROLL, Jr., *Cocounsel*

GEORGE B. LINDREW, *Minority Counsel*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

TUESDAY, JULY 26, 1983

Ford, Hon. Ford B., Under Secretary of Labor, Department of Labor, Washington, D.C.....	Page 3
Miller, Joseph C., president and chief operating officer, Lowe's Inc., South Bend, Ind.; Harry M. Conger, vice chairman, American Mining Congress, San Francisco, Calif.; and Chris F. Woods, executive vice president, Al Johnson Construction Co., Minneapolis, Minn., on behalf of the Associated General Contractors of America, accompanied by Dennis Bradshaw and Michael Fanning, AGC Washington Staff.....	37
Main, Joseph A., administrator, department of occupational health and safety, United Mine Workers of America, Washington, D.C., and John J. Sheehan, legislative director, United Steelworkers of America, Washington, D.C.....	65
Roverud, Jeffrey C., chairman, National Limestone Institute Safety Committee, and president, Pederson Bros. of Harmony, Inc., Harmony, Minn., accompanied by Jim Williams, president, National Limestone Institute, and Randy Rawson, vice president and director of governmental affairs; James M. Christie, manager, corporate safety administration, Vulcan Materials Co., Birmingham, Ala., on behalf of National Crushed Stone Association, accompanied by Robert Hollenbeck, vice president of governmental affairs, and William Bethune, legal counsel; and Lewis Pettinos, president, George Pettinos, Inc., Ardmore, Pa., on behalf of National Sand & Gravel Association/National Industrial Sand Association, a panel	107

STATEMENTS

American Mining Congress, Harry M. Conger, vice chairman, prepared statement.....	51
Associated General Contractors of America, Chris F. Woods, member, prepared statement.....	59
Bituminous Coal Operators' Association, Inc., Robert H. Quenon, chairman, prepared statement.....	196
California Mining Association, Ray B. Hunter, executive director, prepared statement.....	184
China Clay Producers, prepared statement.....	173
Ford, Hon. Ford B., Under Secretary of Labor, Department of Labor, Washington, D.C.....	3
Prepared statement (with attachments)	8
Main, Joseph A., administrator, department of occupational health and safety, United Mine Workers of America, Washington, D.C., and John J. Sheehan, legislative director, United Steelworkers of America, Washington, D.C.....	65
Prepared statement	68
Miller, Joseph C., president and chief operating officer, Lowe's Inc., South Bend, Ind.; Harry M. Conger, vice chairman, American Mining Congress, San Francisco, Calif.; and Chris F. Woods, executive vice president, Al Johnson Construction Co., Minneapolis, Minn., on behalf of the Associated General Contractors of America, accompanied by Dennis Bradshaw and Michael Fanning, AGC Washington Staff.....	37
Prepared statement	40
National Constructors Association, prepared statement.....	188

IV

National Crushed Stone Association, James M. Christie, on behalf of, prepared statement.....	Page 128
National Sand & Gravel Association and the National Industrial Sand Association, Lewis McM. Pettinos, on behalf of, prepared statement.....	158
Roverud, Jeffrey C., chairman, National Limestone Institute Safety Committee, and president, Pederson Bros. of Harmony, Inc., Harmony, Minn., accompanied by Jim Williams, president, National Limestone Institute, and Randy Rawson, vice president and director of governmental affairs; James M. Christie, manager, corporate safety administration, Vulcan Materials Co., Birmingham, Ala., on behalf of National Crushed Stone Association, accompanied by Robert Hollenbeck, vice president of governmental affairs, and William Bethune, legal counsel; and Lewis Pettinos, president, George Pettinos, Inc., Ardmore, Pa., on behalf of National Sand & Gravel Association/National Industrial Sand Association, a panel	107
Prepared statement	110
Sample, Robert E., corporate safety director, Peter Kiewit Sons', Inc., prepared statement.....	210
Sasser, Hon. Jim, a U.S. Senator from the State of Tennessee, prepared statement.....	36
United Steelworkers of America, John J. Sheehan, legislative director, prepared statement.....	87

ADDITIONAL INFORMATION

Questions and answers:	
Responses of John J. Sheehan, legislative director, United Steelworkers of America to questions asked by Senator Nickles.....	102
Selected tables:	
Comparison of civil penalties between MSHA and OSHA.....	172

FEDERAL MINE SAFETY AND HEALTH AMENDMENTS OF 1983

TUESDAY, JULY 26, 1983

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 8:31 a.m., in room SD-430, Dirksen Senate Office Building, Senator Don Nickles (chairman of the subcommittee) presiding.

Present: Senators Nickles, Randolph, Grassley, and Denton.

OPENING STATEMENT OF SENATOR NICKLES

Senator NICKLES. Good morning.

Today's hearing is on S. 1173, the Federal Mine Safety and Health Amendments of 1983. This legislation is designed to better protect the health and safety of the Nation's miners by enabling the Mine Safety and Health Administration [MSHA] to focus attention where problems exist, and encourage greater cooperation between Government and industry.

I believe we must work to provide the safest and healthiest working environment for our Nation's miners. This legislation would fine-tune MSHA statutes so that Government resources can be utilized more effectively in combating safety and health problems.

Under Secretary of Labor Ford B. Ford has instituted a reorganization of MSHA field offices to insure maximum utilization of the agency's resources. Senate bill 1173 would further assist MSHA by doing the following. It would allow MSHA to send inspectors to surface mines where problems exist, rather than be required to inspect all sites twice a year, regardless of need. It would remove mandatory training hours for new surface miners, permit on-the-job training and flexibility in annual training requirements. Current laws penalize small family-owned mines with few employees and seasonal mine operations. It would permit MSHA to provide on-site consultation and assistance. The law now discourages voluntary cooperation by operators with MSHA inspectors. The bill would enhance safety and health standards by encouraging MSHA and industry to work together. It would remove mandatory penalties for minor violations that are easily corrected when pointed out by MSHA inspectors. Like the previous provision, this, too, would serve as an incentive to MSHA and industry to work together.

The bill would also exempt mine sites owned or operated by a State or political subdivision of a State. These are generally small

mines over which States have shown competent ability to oversee. This would also allow MSHA to focus more attention on other sites. I believe that we must provide MSHA with the flexibility it needs to enhance and improve the workplace safety and health.

Mr. Ford, I appreciate your cooperation and assistance before this subcommittee. This hearing has been rescheduled several times because of conflicts in my schedule, primarily with the natural gas legislation that we are in the process of marking up. We are trying to finalize markup this morning, so it will be necessary for me to leave before this hearing is concluded, and I expect that Senator Denton or possibly another Senator will take my place. I would appreciate it if all of our witnesses would condense their statements and keep your remarks within the 5-minute rule of this subcommittee. Your cooperation would certainly be appreciated.

All the statements by our witnesses today will be entered into the record in full following your oral remarks. At this point we will insert the opening statement of Senator Grassley, who was delayed but will join us shortly.

[The opening statement of Senator Grassley follows:]

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Mr. Chairman, I commence my statement by noting your unfaltering diligence in the pursual of legislation designed to reexamine the jurisdictional parameters of the Mine Safety and Health Act of 1977.

We are all aware that this act was established principally to regulate safety standards for underground mines. And I believe that everyone in this room is aware that the results of this act have been none too effective or satisfying throughout the surface, sand, gravel, and stone industries in this country.

As a cosponsor of S. 351 in the 97th Congress, I believe that the keynote of that legislation and in fact one of the keynotes of this administration is to deal responsibly with the heavy burdens that Federal regulations place on business and industry.

As the sponsor of the Regulatory Reform Act, S. 1080, I believe that we must incorporate into the regulatory process a requirement that Federal agencies assess the potential impact of their regulations on business concerns and tailor their requirements to respond to the unique situation of those businesses. Contained in S. 1080 are a number of other measures that are designed to comprehensively reform the process by which Federal agencies oversee business, industry, and consumers. We may all feel heartened by the knowledge that this bill passed the 97th Congress by a resounding 94-0 and I am hopeful that we will see a similar legislative success this year.

While we are likely to experience relief from some of the more onerous provisions of the Mine Safety and Health Act of 1977 should S. 1080 become law in the near future, it is imperative that the bill that Senator Nickles has worked on pass both Chambers of Congress in the near future. I am here to give you any assistance that I can in accomplishing this goal.

Senator NICKLES. Mr. Ford, welcome before this committee again.

**STATEMENT OF HON. FORD B. FORD, UNDER SECRETARY OF
LABOR, DEPARTMENT OF LABOR, WASHINGTON, D.C.**

Mr. FORD. Thank you, Mr. Chairman.

Mr. Chairman and distinguished members of the subcommittee, I am pleased to appear before you today to discuss the Federal Mine Safety and Health Act of 1977, MSHA's programs to promote a safe, healthful, and productive mining industry, and the recent bill introduced by the distinguished chairman to amend the Mine Act.

In the past 18 months, MSHA has proceeded with encouraging success on a number of administrative initiatives. We have accomplished a major reorganization, hired and begun training more than 200 new coal mine inspectors and specialists, continued major regulatory review projects and embarked on new ones, focused special emphasis programs on the worst hazards, and set up new forums for dialog among industry, labor, and government.

Progress has also been made over the past 18 months with respect to our goals of reduced accidents and injuries—however, the tragic explosion which occurred recently serves to remind us that all of us in the mining community must remain forever vigilant.

The mining community—mine workers, mine management, and Federal and State organizations—have each contributed to the recent progress that has been made, and we must all continue our efforts to insure that the number of mine accidents and injuries decline even further. And I firmly believe we can continue to make important strides in achieving these mutual goals through further efforts in communication, coordination, and cooperation among the sectors of the mining community.

Our initiatives at MSHA have been designed to make "cooperation" more than a catchword, and in recent months, we have seen more dialog and more cooperative activities among the sectors of the mining community than ever before.

They have included the implementation of a major reorganization last spring, an unprecedented regulatory review and reform effort, and the institution of safety and health conferences throughout the Nation. Each of these initiatives is designed to get management, labor and MSHA together to discuss safety and health conditions and problems, find the root causes of the problems, and exchange information on how to resolve those problems. We have found that through these initiatives, the mining community has been encouraged to focus its attention and resources on correcting specific adverse safety and health conditions at individual mines.

Rather than discussing each initiative, I have attached to my statement a summary of the reorganization, a regulatory reform agenda, and a listing of the health and safety conferences held. I believe that the attachments will clearly demonstrate that we at MSHA have, in the past year, made considerable progress in making our programs more flexible and responsive to the safety and health needs of the entire mining community.

I believe, however, that in a few areas of the Mine Act, MSHA and the mining community might benefit from some greater flexibility than the current law allows. Accordingly, last spring, I offered for the mining community's consideration several suggestions concerning statutory changes that would give MSHA more flexibil-

ity to do a better job. I note with pleasure that the proposals that were set forth, which were also in MSHA's fiscal year 1984 appropriations request, are contained in your bill, Senator Nickles. I am pleased to state that the administration supports S. 1173.

S. 1173 contains changes to the Mine Act which I believe would enable MSHA to work cooperatively with those mine operators who have effective safety and health programs in place and who are committed to preventing injuries and illnesses, and further, to provide strong motivation for other mine operations to achieve that level of commitment.

At the same time, S. 1173 preserves the strong enforcement framework and appropriate civil penalty provisions of current law to allow MSHA to deal with recalcitrant operators who do not achieve that commitment.

I realize that many other concerns have been voiced about the Mine Act over the past several years. However, it is my strong belief that S. 1173, as introduced by you, would if enacted into law allay most of those concerns.

With this brief background, I will discuss the specific provisions of the bill.

S. 1173 proposes to amend the Mine Act to allow secretarial discretion in determining the number of annual inspections at surface mines. The number of inspections would be based on criteria to be determined through MSHA's rulemaking process.

We support this amendment for several reasons. First, this proposal would let MSHA concentrate inspection resources on those mines where more frequent inspections are needed to prevent accidents and illnesses. Second, the proposal recognizes the fact that MSHA conducts a variety of inspection activities, other than the complete annual inspections, which can be used to assure that the surface operations are maintaining or surpassing the criteria that made them eligible for less frequent complete inspections.

Third, the proposal does not affect the minimum number of annual inspections at underground mines. We believe that the underground mining environment presents unique hazards and situations which can create the potential for unusual and unexpected occurrences. As the variety of mining conditions and the confined environments of underground mines warrant close and frequent inspections, we do not support any amendment to reduce the existing number of annual mandatory underground inspections.

Under the existing requirements of the 1977 Mine Act, all surface operations, regardless of their safety and health record or history, are subject to complete inspections twice annually. This, in our view, is an inefficient use of valuable resources. There are many surface mines which have effective safety and health programs. MSHA's preliminary statistics show that in 1982, over 2,000 surface coal mines did not support a single lost workday accident to MSHA. Our statistics also indicate that in the metal/nonmetal area, approximately 8,500 mines did not report a single lost workday injury in 1982.

In my view, these mines are carrying out on a daily basis effective safety and health programs and would therefore not necessarily benefit from two complete safety and health inspections annual-

ly as much as they would from compliance visits or training assistance.

On the other hand, there are operations which have a higher than average incidence rate which may need more than two annual complete safety and health inspections, as well as compliance and training assistance in order to help them reduce their rates.

A second amendment to the Mine Act proposed by S. 1173 would permit MSHA to issue notices of violation rather than citations for less serious violations. We support this proposal as it is a natural extension of MSHA's existing civil penalty rules, which provide a \$20 single penalty for less serious violations that are corrected within the abatement time. This change would conserve MSHA resources now used in assessing and collecting small fines, and more importantly, it would also provide added encouragement to correct violations promptly.

Currently, MSHA is statutorily required to levy a civil penalty for every violation. This requirement of the 1977 Mine Act has been the most controversial, particularly for the metal and nonmetal mines. It has created, in many cases, counterproductive adversarial relationships. The \$20 single penalty was adopted, in part, to try to alleviate this impediment to cooperation while fulfilling the statutory requirement for assessment of a penalty.

MSHA's experience with the \$20 single penalty assessment has shown it to be a positive step in fostering a more cooperative and productive environment for achieving safety and health in the mines. For example, it has virtually eliminated the tendency to request conferences on the less than serious violations. It has also virtually eliminated the tendency to contest the less than serious violations. Further, very few orders of withdrawal under section 104(b) have been issued for failure to abate these violations. In summary, we have found that this provision has provided an incentive for timely abatement of less than serious violations.

However, if this proposal were enacted, MSHA would retain the authority to issue an order of withdrawal if an operator decides to ignore the notice. Therefore, enacting this provision of S. 1173 will not alter the compliance responsibilities of either MSHA or the mine operator.

S. 1173 also amends section 115, the mandatory training provisions of the statute, to grant the Secretary discretion to approve a training program for new surface miners including the authority to set the minimum number of hours of training. The bill also permits Secretarial discretion in determining the extent of required refresher training and permits on-the-job training under certain conditions. We support this amendment as we believe these changes would help us encourage industry to develop more effective training programs that prepare miners to work safely. The Mine Act presently requires that all surface mine operators give all new employees with no previous work experience 24 hours of training before being assigned to their specific tasks. As you are aware, the surface mining industry encompasses large, open pit operations that may employ 300 workers, that experience a significant employee turnover rate, and that have the various functions broken down into specific tasks assigned to various workers. It also encom-

passes sand and gravel pits that may employ three or four workers who are expected to perform all the jobs associated with the operation.

It is our belief that the most effective training comes from analysis of the accident experience and the job requirements of each surface mine. Perhaps more so in this area than any other, MSHA as well as the surface mine operators and workers need the additional flexibility provided in S. 1173 to permit the development of effective training programs that are mine-specific and related to the tasks performed and hazards encountered as closely as possible. The current requirements have been found by many members of the surface mining community to be too rigid and in many cases, inapplicable to specific work situations.

Realizing the problems encountered by surface mine operators, MSHA has administratively and through the regulatory process tried to alleviate some of the concerns expressed. In a very practical sense, this amendment will lead, I believe, to a more realistic evaluation of the training needs for new surface miners. Some miners may receive more than 24 hours of training; some may receive less. However, the training should and would be related directly to the hazards of that particular job or operation.

We also support the proposal to legislatively allow on-the-job training. Industrial research indicates that structured on-the-job training is a very effective way of teaching skills related to health and safety because the mine operator has the flexibility to tailor the training to the particular needs of the operation, and the program can be modified as new needs arise.

We also support the proposal to eliminate the required hours for annual refresher training. We certainly agree that refresher training is necessary. However, our experience over the past 5 years has shown that many operators still believe that since the law says it is 8 hours, it must be 8 hours at one time and one place. This may not be effective health and safety training for all situations. The operator or supervisor should have the flexibility to determine when the workers need a particular type of refresher training, based on his or her own observation of the work practices. MSHA will continue its responsibility to approve and monitor the effectiveness of training plans at each mine.

Another amendment which is contained in S. 1173, which we also strongly endorse, would permit MSHA inspectors to perform consultation and assistance visits during production hours. Currently, MSHA is limited in its ability to assist the mining community in promoting safety and health outside of the enforcement context. Section 502 gives MSHA general authority to provide technical assistance to operators in improving safety and health, but does not clearly indicate under what conditions MSHA can provide that assistance.

In October 1979, MSHA initiated a program under the authority of section 502 to provide compliance assistance visits, called CAV's, to metal and nonmetal operators upon their request. However, because the Mine Act does not permit us to suspend our enforcement activities while a mine is operating, CAV's are limited to the following situations: New mines not yet producing; seasonal, closed, or abandoned mines prior to reopening; and new installations or

new equipment in an operating mine prior to their becoming operational.

We believe that enacting the provision on consultation and assistance in S. 1173 would allow MSHA to offer more help to mine operators who want to rid their operations of safety and health conditions that could present or become hazards.

In summary, in addition to providing clear authority for consultation and assistance during production hours, enactment of this provision would lend further support to MSHA's demonstrated success in its program in accident reduction in metal and nonmetal mines and the nonfatal days lost program in the coal mines, thus enhancing their effectiveness.

I hasten to assure the members of the subcommittee, as well as the mining community, that it is MSHA's intent to use this latitude, if enacted into law, to supplement our regular enforcement program, not supplant it.

Last, S. 1173 would amend the Mine Act to exempt State, city, and county-operated mines from MSHA's jurisdiction. Although these types of operations have been subject to Federal regulation for some time, we realize the problems of one governmental body regulating another. In fact, these problems are compounded by the civil penalty requirements. Many State organizations have their own safety and health programs for their employees. Also, many of these operations, which total less than 1,000, could be covered by the 22 States and 2 jurisdictions participating in OSHA's State plan programs. MSHA therefore believes that enactment of this amendment would not adversely affect the workers at those operations and would reduce duplicative regulatory activities.

Let me emphasize in closing, however, that while these legislative changes will further enable us to advance our common goal of improved mine safety and health, we plan to continue our efforts in MSHA to promote a more cooperative approach to safety and health among industry, labor, and government. We plan to continue working to improve communications with the mining community. We plan to continue providing consultative assistance in solving safety and health problems through programs we can conduct under existing law. We plan to continue to employ our enforcement tools to best advantage when encountering bad faith or recalcitrance. And, we plan to continue to seek advice and assistance from all members of the mining public as we work to target MSHA's programs and regulations closely to one goal—reduced accidents and illnesses.

Mr. Chairman, I have summarized my prepared statement, which I respectfully request be included in the record, as you suggested, and I would be happy to answer any questions you may have.

Senator NICKLES. Thank you, Mr. Ford. Your entire statement will be included in the record. Your statement was very attentive to details and also to the need to try and make some improvements.

[The prepared statement of Mr. Ford follows:]

TESTIMONY OF FORD B. FORD
UNDER SECRETARY OF LABOR
BEFORE THE
COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON LABOR

July 26, 1983

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the Federal Mine Safety and Health Act of 1977, MSHA's programs to promote a safe, healthful, and productive mining industry and the recent bill introduced by the distinguished Chairman to amend the Mine Act.

In the past 18 months MSHA has proceeded with encouraging success on a number of administrative initiatives. We have accomplished a major reorganization, hired and begun training more than 200 new coal mine inspectors and specialists, continued major regulatory review projects and embarked on new ones, focused special emphasis programs on the worst hazards, and set up new forums for dialogue among industry, labor, and government.

Progress has also been made over the last 18 months with respect to our goals of reduced accidents and injuries--however, the tragic explosion which occurred last month serves to remind us that we must remain vigilant.

- 2 -

The mining community -- mine workers, mine management, and federal and state organizations -- has contributed significantly to the recent progress in mine safety and we must continue our efforts to ensure that the number of mine accidents and injuries decline even further. And -- I firmly believe -- that we can continue to make important strides in achieving these mutual goals through further efforts in communication, coordination, and cooperation among the sectors of the mining community.

We at MSHA harbor no illusions about continuing this progress alone. MSHA needs the advice and counsel and cooperation of the mining community in order to continue to foster safety and health achievements, as we cannot single-handedly assure the safety and health of the miners. I also strongly believe that industry, labor and government cannot be adversaries when it comes to safety and health. Safe, productive mines benefit everyone: miners, mine management and the nation as a whole. We in the mining community may sometimes disagree about the best way to achieve safety and health, but we all must agree on the goal.

That is why a constant theme of my initiatives at MSHA has been "cooperation." By cooperating, I believe that we can go far towards our mutual goal of a safe, healthful and productive industry.

- 3 -

Our initiatives at MSHA have been designed to make "cooperation" more than a catchword -- and in recent months we have seen more dialogue and more cooperative activities among the sectors of the mining community than ever before.

They have included the implementation of a major reorganization last spring, an unprecedented regulatory review and reform effort and the institution of safety and health conferences throughout the nation. Each of these initiatives is designed to get management, labor and MSHA together to discuss safety and health conditions and problems, find the root causes of the problems and exchange information on how to resolve those problems. We have found that through these initiatives the mining community has been encouraged to focus its attention and resources on correcting specific adverse safety and health conditions at individual mines.

Rather than discussing each initiative at length, I have attached to my statement a summary of the reorganization, a regulatory reform agenda, and a listing of the health and safety conferences held. I believe that the attachments will clearly demonstrate that we at MSHA have, in the past year, made considerable progress in making our programs more flexible and responsive to the safety and health needs of the mining community.

- 4 -

I believe, however, that in a few areas of the Mine Act, MSHA and the mining community might benefit from some greater flexibility than the law currently allows. Accordingly, last spring I offered for the mining community's consideration several suggestions concerning statutory changes that would give MSHA more flexibility to do a better job. I note with pleasure that the proposals I set forth (which were also in MSHA's fiscal year 1984 appropriations request) are contained in Senator Nickles' bill, S. 1173. I am pleased to state that the Administration supports S. 1173.

I would like to spend a few moments discussing the reasons why we support S. 1173 and then would be happy to answer any questions the distinguished members of the Subcommittee may have.

S. 1173 contains changes to the Mine Act which I believe would enable MSHA to work cooperatively with those mine operators who have effective safety and health programs in place and who are committed to preventing injuries and illnesses.

At the same time, S. 1173 preserves the strong enforcement framework and civil penalty provisions of current law to allow MSHA to deal with recalcitrant operators who lack that commitment.

I realize that many other concerns have been voiced about the Mine Act over the past several years. Indeed, many of

- 5 -

them have been advanced as amendments to the Mine Act. I personally have studied these issues and understand the concerns expressed. However, it is my strong belief that S. 1173 as introduced by Senator Nickles, would -- if enacted into law -- allay most of those concerns.

With this brief background I will discuss the specific provisions of the bill.

S. 1173 proposes to amend the Mine Act to allow Secretarial discretion in determining the number of annual inspections at surface mines. The number of inspections would be based on criteria to be determined through MSHA's rulemaking process.

We support this amendment for several reasons. First, this proposal would let MSHA concentrate inspection resources on those mines where more frequent inspections are needed to prevent accidents and illnesses. Second, the proposal recognizes the fact that MSHA conducts a variety of inspection activities -- other than the complete annual inspections -- which can be used to assure that the surface operations are maintaining (or surpassing) the criteria that made them eligible for less frequent complete inspections.

Third, the proposal does not affect the minimum number of annual inspections at underground mines. We believe that the underground mining environment presents unique hazards

- 6 -

and situations which can create the potential for unusual and unexpected occurrences. As the variety of mining conditions and the confined environments of underground mines warrant close and frequent inspections, we do not support an amendment to reduce the existing number of annual mandatory underground inspections.

Under the existing requirements of the 1977 Mine Act, all surface operations, regardless of their safety and health record or history, are subject to complete inspections twice annually. This, in our view, is an inefficient use of valuable resources. For example, a Northeastern Florida surface mining operation has recently completed its tenth year of operation and almost 6 million employee hours without a single lost work day accident. This operation must have an effective safety and health program to achieve this exceptional record. However, under the existing Mine Act, this operation is, for inspection purposes, treated exactly the same as all other surface mines -- including those that have had serious accidents and/or fatalities.

Obviously, the example I have cited is an exception. However, there are many other surface mines which also have effective safety and health programs. MSHA's preliminary statistics show that in 1982 over 2000 surface coal mines did not report a lost workday accident to MSHA. Our statistics also

- 7 -

indicate that, in the metal/nonmetal area, approximately 8500 mines did not report a lost work day injury in 1982. In my view, these mines are carrying out, on a daily basis, effective safety and health programs and would therefore not necessarily benefit from two complete safety and health inspections annually as much as they would from compliance visits or training assistance.

On the other hand, there are operations which have a higher than average incidence rate which may need more than two annual complete safety and health inspections, as well as compliance and training assistance in order to help them reduce their rates.

Realizing this, MSHA has conducted a Program in Accident Reduction (PAR) at selected metal/nonmetal mines for several years. Approximately 60 mines are selected annually for PAR based, in part, on their high injury incidence rate. (This year there are 55 mines on PAR of which 10 are surface mines and 24 are mills.) Under this program, the mines are evaluated by both inspection and training personnel to determine the root causes of injuries. The mines then experience a variety of MSHA activity -- inspections as well as technical and training assistance. In essence, MSHA uses all the tools available under the Mine Act -- not just inspections -- in their most

- 8 -

effective manner to help the operators on PAR to improve the injury record. This program, in our view, has been exceptionally successful as is evidenced by the fact that the number of fatal and nonfatal days lost injuries for the mines on PAR declined by 58 percent in fiscal year 1982 compared with the same period the preceding year.

In 1982, we instituted a similar program in the coal activity. The Nonfatal Days Lost (NFDL) program was established to target mines for special attention. In essence this program also uses all the tools of the Mine Act -- technical assistance, training and inspection activities -- to work with both the miners and operators in reducing the accidents and injury rates at their mines.

One hundred twenty mines were initially selected for this program in 1982 and of the 105 mines that stayed in the program for the entire year, approximately two-thirds achieved a decline in their accident rates.

In summary, I believe this particular provision of S. 1173 would encourage the cooperative spirit that has contributed to the success of programs such as PAR and NFDL, would give MSHA the flexibility to expand and/or develop similar programs, would give operators an incentive to improve their safety and health programs and records, as well as allow MSHA to utilize its resources more efficiently and effectively in

- 9 -

assisting operators and workers in achieving our common goal -- reduced accident, injury, and illness rates in the mining industry.

A second amendment to the Mine Act proposed by S. 1173 would permit MSHA to issue notices of violation rather than citations for less serious violations. We support this proposal as it is a natural extension of MSHA's existing civil penalty rules which provide a \$20 single penalty for less serious violations that are corrected within the abatement time. This change would conserve MSHA resources now used in assessing and collecting small fines. It would also provide added encouragement to correct violations promptly.

Currently, MSHA is statutorily required to levy a civil penalty for every violation. This requirement of the 1977 Mine Act has been the most controversial, particularly for the metal and nonmetal mines. It has created, in many cases, an adversarial relationship. Further, it has detracted from resolution of health and safety problems as many operators have felt that by calling attention to a potential problem, they were "setting themselves up" for a fine. The \$20 single penalty was adopted, in part, to try to alleviate this impediment to cooperation while fulfilling the statutory requirement for assessment of a penalty.

- 10 -

MSHA's experience with the \$20 single penalty assessment has shown it to be a positive step in fostering a more cooperative and productive environment for achieving safety and health in the mines. We believe the mining community is focusing its resources on those violations which have the greatest impact on miner safety and health. For example, it has eliminated the need for conferences on the less than serious violations. It also has eliminated the need to contest the less than serious violations. Further, very few orders of withdrawal under section 104(b) have been issued for failure to abate these violations. In summary, we have found that this provision has provided an incentive for timely abatement of less than serious violations.

As we understand this provision of S. 1173, less than serious ("non significant and substantial") violations would result in a notice of violation. If the condition which resulted in the notice is corrected in the prescribed abatement time, a civil penalty would not be assessed. However, if the condition which resulted in the notice of violation is not corrected in the prescribed time, an order of withdrawal would be issued and a civil penalty assessment proposed.

I believe this provision of S. 1173 will enhance MSHA's credibility and effectiveness as an agency whose primary purpose is to assist in improving safety and health conditions in

- 11 -

the mines. It allows MSHA to point out those conditions which will not significantly and substantially affect the safety or health of the workers. It will allow operators an opportunity to correct those conditions within a prescribed time. However, MSHA retains the authority to issue an order of withdrawal if an operator decides to ignore the notice. Enacting this provision of S. 1173 will not alter the compliance responsibilities of either MSHA or the mine operator. However, we believe this change would remove an irritant that impinges on the credibility of our other efforts. It would assure the mining community that MSHA is sincere in its program of assisting in the reduction of accident, injury, and illness rates. At the same time, MSHA would retain its capability to compel into compliance those recalcitrant operators who are unwilling to maintain safe and healthful workplaces.

S. 1173 also amends section 115 -- the mandatory training provisions of the statute to grant the Secretary discretion to approve a training program for new surface miners including the authority to set the minimum number of hours of training. The bill also permits Secretarial discretion in determining the extent of required refresher training and permits on-the-job training under certain conditions. We support this amendment as we believe these changes would help us encourage industry to develop effective training programs that prepare miners

- 12 -

to work safely. Through the reorganization we have seen that MSHA's training specialists provide valuable assistance to mine operators in identifying the causes of safety problems and developing a program to eliminate them. The proposed amendment would build upon this assistance and allow operators to tailor a training program to the specific hazards his or her workers may encounter -- and be reasonably assured that MSHA can approve the plan. We believe this amendment will encourage mine operators to use the training provisions as they were intended -- as a method of reducing accidents and injuries at their operations.

Currently, the 1977 Mine Act does not allow the surface mining community to address the individual needs of each specific operation. In summary, the Mine Act requires that all surface mine operators give all new employees with no previous work experience 24 hours of training before being assigned to their specific tasks. Also, all miners are required to have 8 hours of annual refresher training. And new task training is required for workers being assigned to other jobs.

As you are aware, the surface mining industry encompasses large open pit operations that may employ 300 workers, that experience a significant employee turnover rate and that have the various functions broken down into specific tasks assigned to various workers. It also encompasses the sand and gravel

- 13 -

pits that may employ three or four workers who are expected to perform all the jobs associated with the operation.

Perhaps more so in this area than any other, MSHA as well as the surface mine operators and workers need the additional flexibility provided in S. 1173 to permit the development of effective training programs that are mine-specific and related to the tasks performed and hazards encountered as closely as possible. The current requirements have been found by many members of the surface mining community to be rigid and, in many cases, inapplicable to specific work situations.

Realizing the problems encountered by surface mine operators, MSHA has administratively and through the regulatory process tried to alleviate some of the concerns expressed. For example, MSHA's final rules implementing section 115 of the 1977 Mine Act allow surface mine operators to conduct 16 of the 24 required hours for new workers within a specified time after they had been employed, so long as at least 8 hours of the required training was conducted prior to their being assigned to their work tasks. Also, MSHA has allowed operators to conduct the annual refresher training in increments of 30 minutes or more or 8 hours at one period, depending on the operators needs. However, even with these administrative actions many members of the surface mining community have found the existing training requirements inflexible. In fact, since fiscal year 1980

- 14 -

MSHA has been prohibited from enforcing the training requirements and regulations at sand and gravel, surface stone, clay, and colloidal phosphate operations through appropriation riders.

The reorganization implemented last year was an attempt to establish administratively some additional flexibility in this aspect of the Mine Act. As part of the reorganization we closed the 10 separate training centers and moved those functions to the MSHA District Offices. As you are aware, the basic purpose was to assure that the District Managers who have the specific knowledge of the problems of the mines in their districts had all the tools -- including education and training -- available to them to help the industry reduce their accident and injury rates. I believe MSHA now has the ability to and in fact does utilize the health and safety training specialist in a more effective manner. The safety and health specialists are now sent to the various mines in their districts to assist the operators in developing training programs that are specifically tailored to the problems that can be encountered at that particular mine to the extent possible under existing law. Although this aspect of the reorganization has been well received and has added a dimension of flexibility to MSHA's activities in the training area, we believe that amending the Mine Act as proposed in S. 1173 would assist us and the industry in assuring that the training provisions

- 15 -

are even more effectively used in reducing accidents and injuries at surface mine operations.

We also believe that the amendments to the training provisions contained in S. 1173 will encourage training to become an on-going activity in the workplace rather than an exercise to meet specific legal requirements. It is our belief that the most effective training comes from analysis of the accident experience and the job requirements of each surface mine. Once these analyses are made, then an allocation of total training hours can be determined for the new surface miner program. In a very practical sense this will lead, I believe, to a more realistic evaluation of the training needs for new surface miners. Some miners may receive more than 24 hours of training, some may receive less. However, the training should relate directly to the hazards of that particular job or operation.

We also support the proposal to legislatively allow on-the-job training. Industrial research indicates that structured on-the-job training is a very effective way of teaching skills related to health and safety because the mine operator has the flexibility to tailor the training to the particular needs of the operation -- and the program can be modified as new needs arise. Also the actual course of instruction is more amendable to measuring the progress of the worker being trained. The instructor can continually evaluate the progress by requiring

- 16 -

workers to demonstrate safe performance of each task before proceeding to the next aspect of that task. In essence, constant performance evaluation can be built into the training program through observation.

We also support the proposal to eliminate the required hours for annual refresher training. We certainly agree that refresher training is necessary. However, our experience over the past 5 years has shown that many operators still believe that since "the law says it is 8 hours, it must be 8 hours at one time and one place." This may not be effective health and safety training for all situations. The operator or supervisor should have the flexibility to determine when the workers need a particular type of refresher training based on his or her own observation of the work practices. In summary, we believe that by eliminating the statutory requirement for 8 hours of annual refresher training, and adopting regulations which include the appropriate number of hours to ensure effective retraining, mine operators will be encouraged to develop a refresher training program that is related to their current mine safety and health problems.

Another amendment which is contained in S. 1173 which we also strongly endorse would permit MSHA inspectors to perform consultation and assistance visits during production hours.

- 17 -

Currently, MSHA is limited in its ability to assist the mining community in promoting safety and health outside of the enforcement context. Section 502 gives MSHA general authority to provide technical assistance to operators in improving safety and health, but does not clearly indicate under what conditions MSHA can provide this assistance.

In October 1979, MSHA initiated a program under the authority of section 502 to provide Compliance Assistance Visits (CAV's) to metal and nonmetal operators upon their request. However, because the Mine Act does not permit us to suspend our enforcement activities while a mine is operating, CAV's are limited to the following situations:

- 1) New mines not yet producing;
- 2) Seasonal, closed, or abandoned mines prior to reopening; and
- 3) New installations or new equipment in an operating mine prior to their becoming operational.

We believe that enacting the provision on consultation and assistance in S. 1173 would allow MSHA to offer more help to mine operators who want to rid their operations of safety and health conditions that could present or become hazards. As previously mentioned, CAV's are limited to, in essence, non-production times. Under this provision of S. 1173, an operator could request assistance when he or she believes

- 18 -

it may be needed. MSHA inspectors would see the mine in operation, thus enhancing their ability to identify potential problems and poor work practices. In summary, in addition to providing clear authority for consultation and assistance during production hours, enactment of this provision would lend further support to MSHA's PAR and NFDL programs, thus enhancing their effectiveness.

I strongly believe that expanding the availability of consultation and assistance will foster greater cooperation enhance MSHA's credibility as an agency dedicated to reducing accident and injury rates and result in improved safety and health in the nation's mines. However, I hasten to assure the members of this Subcommittee as well as the mining community that it is MSHA's intent to use this latitude -- if enacted into law -- to supplement our regular enforcement program, not supplant it.

Lastly, S. 1173 would amend the Mine Act to exempt State, city, and county-operated mines from MSHA's jurisdiction.

Although these types of operations have been subject to Federal regulation for some time, we realize the problems of one governmental body regulating another. In fact, these problems are compounded by the civil penalty requirements. Many State organizations have their own safety and health programs for their employees. Also, many of those operations

- 19 -

(which total less than one thousand) could be covered by the 22 States and 2 jurisdictions participating in OSHA's State plan programs. MSHA therefore believes that enactment of this amendment would not adversely affect the workers at those operations and would reduce duplicative regulatory activities.

Let me emphasize in closing, however, that while these legislative changes will further enable us to advance our common goal of improved mine safety and health, we plan to continue our efforts in MSHA to promote a more cooperative approach to safety and health among industry, labor, and government. We plan to continue working to improve communications with the mining community. We plan to continue providing consultative assistance in solving safety and health problems through programs we can conduct under existing law. We plan to continue to employ our enforcement tools to best advantage when encountering bad faith or recalcitrance. And, we plan to continue to seek advice and assistance from all members of the mining public as we work to target MSHA's programs and regulations closely to one goal: reduced accidents and illnesses.

Mr. Chairman, this concludes my prepared statement. I would now be happy to answer any questions that you and the other members of the Subcommittee may have. Thank you.

Reorganization of MSHA Field Structure

In mid-1982, MSHA realigned its field organization in order to more effectively use resources to reduce accidents and injuries. The plan to develop a complete health and safety program under the new structure included the following strategy:

- consolidate and unify several MSHA functions that previously had been fragmented by providing MSHA managers at the field office levels with several important tools for improving cooperative working relationships. Specifically, MSHA's field managers were given the responsibility and resources for training and for conferring with operators to discuss inspector's findings;
- place emphasis on inspection closeout conferences at the mine-site to focus on relevant health and safety issues, leading to reduced health and safety conferences on disputed/contested issues;
- provide through informal health and safety conferences an additional opportunity for mine operators and miner's representatives to focus on health and safety issues surrounding a citation's circumstances rather than on penalty amount negotiations;
- improve communications and cooperation with industry and labor and reduce previous adversarial attitudes on health and safety matters; and
- provide the opportunity for MSHA field structure to become more closely involved with State mining agencies and educational institutions.

The results of the reorganization have been encouraging. For example:

- joint efforts by MSHA and the mining industry have begun to significantly reduce adversarial relationships and increase cooperative approaches to mine health and safety issues;
- health and safety issues raised during inspections are being resolved at the inspection closeout conference in over 90 percent of all cases;
- less than 10 percent of all violations result in health and safety conferences with the MSHA district managers and

both mine operators and miner representatives have voiced general satisfaction with the fairness of the process;

- education and training has been well received by the mining community and mine operators are pleased with the opportunity for one-on-one on-site discussions for improving their training programs;
 - district managers are finding that inspectors' citations are better written, more accurate and more complete which will eliminate many apparent inconsistent application of standards.
- 8

Attachment II

<u>REGULATION</u>	<u>REASON FOR RULE AND BACKGROUND</u>	<u>STATUS</u>
1. Electric Cap Lamps (30 CFR Part 19)	MSHA published the final rule for electric cap lamps on March 16, 1982. This rule permits MSHA to investigate cap lamps, used in underground mines, which have new safety features and, upon completion of the investigation, allows MSHA to approve lamps which are more modern and provide the same degree of protection as lamps meeting MSHA's previous requirements.	The effective date of this rule was March 16, 1982.
2. Telephones & Signaling Devices (30 CFR Part 23)	MSHA published its final rule for telephones and signaling devices on March 16, 1982. This rule permits MSHA to approve telephones and signaling devices, used in underground mines, which operate from a mine power or lighting circuit. Previously, MSHA could only approve battery powered devices but developments in communication technology have eliminated hazards associated with mine power or lighting circuits.	The effective date of this rule was March 16, 1982.
3. Electrical Components and Handlights for Mobile Diesel-Powered Transportation Equipment (30 CFR Part 36)	MSHA published this final rule on March 16, 1982. The final rule removes certain design restrictions and allows MSHA to approve the use of portable electric-powered accessories on mobile diesel-powered transportation equipment used in easy metal and nonmetal mines. Miners will benefit from having improved equipment, which will result in safer working conditions.	The effective date of this rule was March 16, 1982.
4. Criteria and Procedures for Proposed Assessment of Civil Penalties (30 CFR Part 100)	MSHA published its final rule for civil penalties on May 21, 1982. This rule revises MSHA's existing procedures for proposing civil penalties under the 1977 Act by allowing MSHA and the mining community to refocus their safety and health efforts on more serious mine hazards.	The effective date of this rule was May 21, 1982.

REGULATION

5. Review of Safety Standards for Underground Coal Mines (30 CFR Part 75)

REASON FOR RULE AND BACKGROUND

On July 9, 1982, MSHA published an advanced notice of proposed rulemaking and solicited public comment concerning sections to be considered for review. In response to comments received and MSHA's review, special emphasis is being placed on the review of roof support, blasting and explosives, and the ventilation plan requirements and criteria. Other high priority sections under review are: Roasting, Fire Prevention, and Combustible Materials. This review was undertaken to eliminate unnecessary standards; clarify and update existing standards; incorporate technological advances; and reduce recordkeeping burdens on industry.

6. Wire Rope Standards for Coal, Metal and Nonmetal Mines (30 CFR Parts 55/56/57, 19, 75 and 77).

MSHA published its proposed rule on Wire Ropes on November 16, 1982, and held public hearings in March 1983. This rule would revise the current requirements for the selection, installation, use, inspection, maintenance and removal of wire ropes used in underground and surface mines.

7. Review of Metal and Nonmetal Standards (30 CFR Parts 55, 56, 57, Sections .3 (Ground Control); .4 (Fire Prevention); .5 (Air Quality); .6 (Explosives); .9 (Loading, Hoisting, Dumping); .13 (Electricity); .14 (Use of Equipment); and .21 (Cavey Mines).

This review was undertaken to eliminate unnecessary standards; clarify and update existing standards; incorporate technological advances; and reduce recordkeeping burdens on industry. On the following dates, MSHA made available preproposal drafts for public comment:

.3 - 3/11/83
.4 - 12/20/82
.5 - 7/6/82
.6 - expected during August 1983
.9 - 4/22/83
.12 - 5/20/83
.14 - 2/11/83
.21 - 6/10/83

STATUS

Preproposal drafts for all the high priority sections are expected to be available for public comment during July and August 1983. Drafts for Roasting and Self-Contained Self-Rescuers were made available July 1. Proposed rules are expected to be published beginning January 1984. All final rules should be published by March 1985.

The final rule is expected to be published during August 1983.

Proposed rules are expected to be published for these sections beginning in August 1983; all proposed rules should be published by January 1984. All final rules should be published by October 1984.

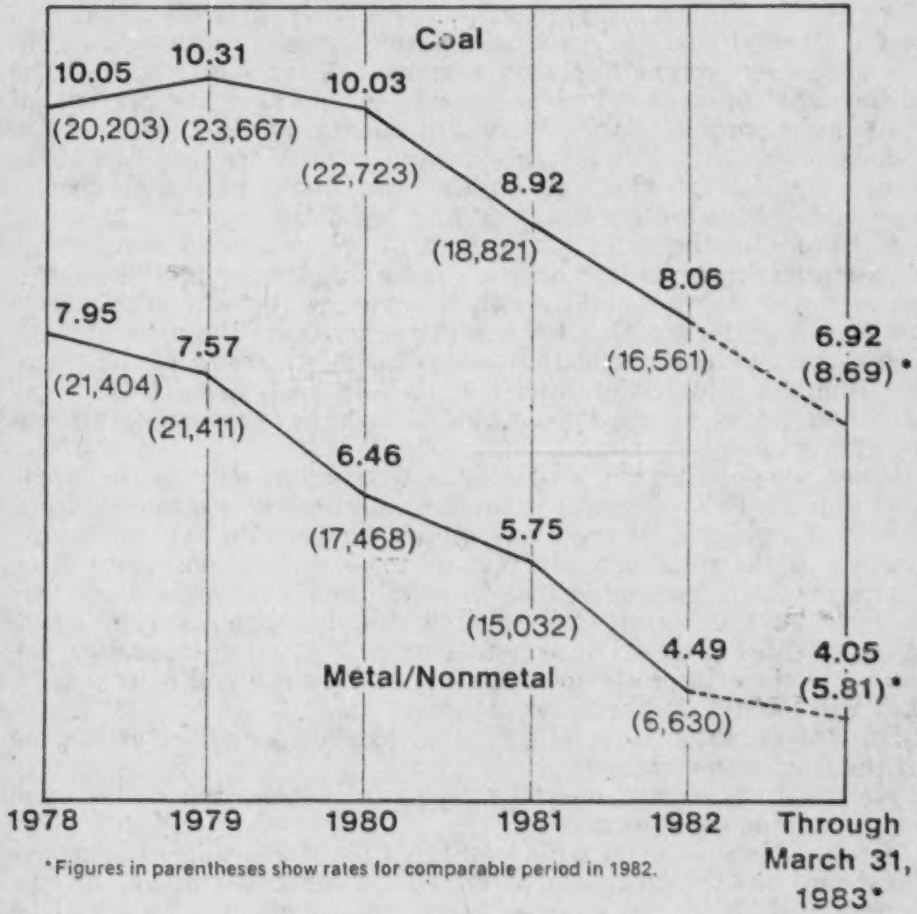
<u>REGULATION</u>	<u>REASON FOR RULE AND BACKGROUND</u>	<u>STATUS</u>
8. Approval and Certification Standard (30 CFR Part 37)	This rule would provide for an alternate program for approval of products after manufacturer testing in lieu of MSHA testing. On March 4, 1983 MSHA published a notice announcing the availability of a preproposal draft of the new rule. Two public meetings were held in April to present the draft.	The proposed rule is expected to be published during October 1983.
9. Training and Retraining of Miners (30 CFR Part 48)	On March 18, 1983 MSHA requested public comment on the need for revisions to the existing rule. MSHA is reviewing these requirements to improve their clarity, applicability, effectiveness, and to consolidate its coal and metal and non-metal training requirements into a single regulation.	In response to comments, MSHA is postponing rulemaking action on the training regulations until further notice. Commenters recommended that this rulemaking be delayed until the review of some of the safety and health standards in 30 CFR Parts 55, 56, 57 and 75 is completed.

MSHA SPONSORED HEALTH AND SAFETY CONFERENCES

<u>Date</u>	<u>Type</u>	<u>Location</u>	<u>Participation</u>
June 29-30, 1982	First National	National Mine Health and Safety Academy	114
November 16-17, 1982	Regional - Coal	Lexington, Kentucky	85
December 8, 1982	Regional - Coal	Beckley, West Virginia	73
December 8, 1982	Regional - Coal	New Stanton, Pennsylvania	167
January 17-18, 1983	Regional - Coal	Morgantown, West Virginia	94
January 25, 1983	Regional - Coal	Evansville, Indiana	118
February 23-24, 1983	Regional - Metal/Nonmetal	Reno, Nevada	97
March 8-9, 1983	Regional - Coal and Metal/Nonmetal	Denver, Colorado Salt Lake, Utah	173
March 24, 1983	Regional - Coal	Frackville, Pennsylvania	31
April 19-20, 1983	Regional - Metal/Nonmetal	Dallas, Texas	88
June 7-8, 1983	Second National	National Mine Health and Safety Academy	270

ALL-INJURY RATES FOR COAL AND METAL AND NONMETAL

All-injury rates per 200,000
employee-hours



Senator NICKLES. Mr. Ford, as you know, I firmly believe that the Mine Safety and Health Administration needs greater flexibility in terms of inspections and also enforcement. This is particularly true in dealing with surface mining operations. Can you tell the subcommittee whether distinguishing between surface and underground mining operations in these areas is justifiable?

Mr. FORD. With respect to the thrust of the bill, we do, Senator, for the purposes and the reason that the underground mining environment is one that is constantly changing. It has an interrelation of problems, for example, dust, gas, methane, in both metal and nonmetal, and coal. Also the ventilation system's interrelation in the closed environment presents many greater hazards than the surface environment, which is more open and does not present all of the major problems that we find in underground mines.

Senator NICKLES. Under the Reagan administration, has there been a significant reduction in either the budget or the number of positions in the enforcement programs of MSHA?

Mr. FORD. In the enforcement area of coal, since the Reagan administration came in, we have 35 more employees, and 760 fewer active mines. In the metal/nonmetal area, we have approximately 202 less inspectors, with 1,400 less active mines at the present time. The metal/nonmetal reduction was primarily a result of the transfer from the Mine Safety and Health Administration to OSHA of sand and gravel, crushed stone, and a few other types of operations for approximately 7 months.

When we got that authority back, we rehired only as the workload indicated as at that particular time, there was a major reduction in the number of operating mines. That would explain the reduction in the number of inspectors in the metal/nonmetal area.

The President requested that 200 additional coal mine inspectors be hired in the spring of 1982, and that has been accomplished. Many of those presently are not listed as coal mine inspectors, because they are in on-the-job training, and by the end of this year, they will be full, authorized representatives.

Senator NICKLES. How long does it take for an inspector coming off the floor to be trained?

Mr. FORD. Approximately 9 months to a year, depending upon their previous background.

Senator NICKLES. You stated MSHA's fiscal year 1984 budget request contains the basic concepts that are contained in this legislation. If S. 1173 is not enacted, what additional resources will be needed, if any?

Mr. FORD. MSHA would need approximately 87 positions, which translates into almost \$3,760,000.

Senator NICKLES. Eighty-seven additional positions?

Mr. FORD. Yes, sir.

Senator NICKLES. Why do you think that industry compliance assistance and consultation during production hours will improve safety and health in the mines?

Mr. FORD. Because the mine actually cannot be reflective of its true environment in nonproduction times. When it is in full production, they are able to determine the problems with dust, with methane and noise that you would not otherwise find during start-up.

Senator NICKLES. What effects have the initiatives which you have instituted at MSHA had on the safety and health of our Nation's miners?

Mr. FORD. That is really difficult to quantify with respect to our specific initiatives. We feel that there has been a major breakthrough in the type of cooperation and attitude and consultation between the mine operators and the miners.

We are very pleased to see the tremendous decrease in the all-injury rates for coal and metal or nonmetal, and I believe that you might have those charts available to you. The reduction since 1981 in all-injury rates for coal or metal and nonmetal has been from 8.92 through the first quarter of calendar year 1983 to 6.92 in coal, and from 6.46 to 4.05 in metal or nonmetal. We have emphasized the cooperation and we have initiated a number of activities that have brought the entire mining community together in discussing specific problems. As I say, it is difficult to quantify, however we feel it is a very positive move.

Senator NICKLES. By all-injury rates, is that any kind of an injury?

Mr. FORD. Any reportable injury.

Senator NICKLES. What is a reportable injury?

Mr. FORD. I do not have a specific definition. Lost-time accidents.

Mr. SHEPICH. Reportable injury, Senator, is described in MSHA regulations as any injuries other than first aid injuries that are attended at the plant. That definition is consistent with the industry definition both for mining and for nonmining activities.

Senator NICKLES. Do you have information on the number of fatalities over the last several years?

Mr. FORD. Yes, sir. We have back to 1978. I might say since 1980, the fatalities in coal—in 1981, 153; 1982, 122; to date in the first quarter of 1983, 37 compared to 71 last year. And in the metal/non-metal, 84 in 1981, 67 in 1982, and 34 compared to 43 in the first quarter last year; for a total of 71 deaths in the mining industry through July 18, 1983, compared to 114 last year at this time.

Senator NICKLES. There has been some reduction, but it's still too high.

Mr. FORD. Entirely too high.

Senator NICKLES. How many people were killed in the accident in Virginia.

Mr. FORD. Seven, sir.

Senator NICKLES. Thank you.

Senator Grassley, we welcome you to this morning's hearings. Do you have any comments for Mr. Ford?

Senator GRASSLEY. I apologize for the fact that I was not able to be here earlier.

I also have a constituent on panel 3, Jeffrey Roverud, president of Pederson Brothers in Harmony, Minn., but he lives in Decorah, Iowa. He has been active in the National Limestone Institute for a long period of time. I have known him ever since I have been in the Congress because of his interest in this area. I want to welcome him to the hearing, and hope that I will be able to stay around long enough to hear his testimony. But if I do not, I want to assure him that I will read it. I also want to remind those present that as a Member of the House of Representatives, I sponsored an amend-

ment in this area. Obviously we did lose, which is why we are here today with the legislation. But I think that this issue has been before us for such a long period of time, and we have established our case so well, that hopefully we will be successful this particular time.

I have one question, Mr. Ford. It deals with section 3 of this legislation, which removes the statutory requirement for two annual mine inspections for surface mines if the mines otherwise meet certain criteria established by this section.

What I would like to know for the record, from your standpoint, is why do you feel that these inspections are cumbersome. If you would just walk through it with us, it would help create for the record an understanding of the problem.

Mr. FORD. Senator, the thrust of the support for establishing statutory criteria for inspection purposes is to recognize those mining operations that have historically had good safety programs, that a wall-to-wall inspection, so to speak, or a complete mine inspection, of those particular operations that detract from the normal work activity may not be as productive as putting our resources in areas where they really need additional activities. They do require the time of the mine operator and the representative of the miners on a walk-around that results in very, very few citations, and some would indicate that there are no citations in those particular operations.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator NICKLES. Thank you, Senator.

Mr. Ford, thank you very much for your cooperation, and again, congratulations to you on your promotion.

Mr. FORD. Thank you very much, sir.

Senator NICKLES. Again, I might remind our panelists that we are under a time constraint and do have a 5-minute limitation on the oral statements.

On our next panel is Joseph Miller, president and chief operating officer of Lowe's, Inc., in South Bend, Ind.; Harry Conger, vice chairman of the American Mining Congress, San Francisco; and Chris Woods, executive vice president of Al Johnson Construction Co., Minneapolis, representing the Associated General Contractors of America.

Mr. Miller, welcome. Senator Sasser wanted to be here this morning to introduce you personally but was unable to attend at the last minute. I ask that his introductory remarks be submitted for the hearing record.

[The prepared statement of Senator Sasser follows:]

PREPARED STATEMENT OF SENATOR SASSER

Senator SASSER. Chairman Nickles, today the subcommittee will hear the testimony of Mr. Joseph Miller of Lowe's Southern Clay, Inc., with regard to S. 1173, the Federal Mine Safety and Health Amendments of 1983.

I commend Mr. Miller's testimony to the subcommittee. Mr. Miller has a distinguished business career, and I am sure that the subcommittee will profit from hearing his views on this legislation.

Mr. Chairman, I commend the subcommittee for conducting prompt hearings on this legislation. I am sure that the subcommittee will carefully deliberate the issues involved in S. 1173 and carefully weigh the merits of all the statements offered today on this measure. I certainly hope that the subcommittee continues its work in attempting to revise counterproductive Federal regulations while at the same time fully protecting the health and safety of American working men and women.

Mr. Chairman, I join with you in welcoming Mr. Miller before the subcommittee.

STATEMENT OF JOSEPH C. MILLER, PRESIDENT AND CHIEF OPERATING OFFICER, LOWE'S, INC., SOUTH BEND, IND.; HARRY M. CONGER, VICE CHAIRMAN, AMERICAN MINING CONGRESS, SAN FRANCISCO, CALIF.; AND CHRIS F. WOODS, EXECUTIVE VICE PRESIDENT, AL JOHNSON CONSTRUCTION CO., MINNEAPOLIS, MINN., ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ACCOMPANIED BY DENNIS BRADSHAW AND MICHAEL FANNING, AGC WASHINGTON STAFF

Mr. MILLER. Thank you, Chairman Nickles.

Mr. Chairman and members of the subcommittee, I am Joseph Miller, president and chief operating officer of Lowe's, Inc., as Senator Nickles mentioned, from South Bend, Ind. We are one of the Nation's largest producers and processors of absorbent clay products. We manufacture annually over 400,000 tons of absorbent clay for such diverse uses as cat box fillers, oil and grease absorbents, and agricultural pesticide carriers.

I am here today representing Lowe's, Inc., but attached to my testimony is a policy statement of the Sorptive Mineral Institute, the national trade association of Sorptive mineral producers and processors, of which Lowe's is a member.

I am here today to testify in support of Senate bill 1173, and congratulate you, Senator Nickles, for its introduction. We believe that this bill properly addresses the need for regulatory relief from the Mine Safety and Health Administration Act of 1977, while continuing the strong commitment to our workers' health and safety.

I would also like to commend the continuing efforts of Ford B. Ford and the Mine Safety and Health Administration to make this act more responsive to the need for increased worker health and safety. Lowe's is committed to the improvement of our workers' health and safety and has implemented a comprehensive safety program. We believe—and the figures attest to the fact—that we have a strong safety record.

In order to give you an example of how our operation functions, I would like to briefly describe our production process. First, raw clay is extracted through the surface at one of our four mines in Tennessee, Illinois, Missouri, or California. The raw clay is then transported to a nearby production facility, where it is crushed, dried, and screened. Thereafter, it moves along the production line and is packaged for sale under brand names such as Kitty Litter, Tidy Cat, and Lowe's Safety Absorbent, or sold in bulk to chemical producers for further manufacture and sale in the agri-marketplace.

We subcontract the mining operation. Our subcontractor uses a total of 13 people to operate all 4 mine sites. With the exception of the subcontractors and management, rarely do our employees go upon the mine sites. They serve in processing, packaging, shipping, and quality control, and may work as far as 15 miles from the extraction area.

At the mine site, conditions are much as you would find in an excavation activity, or a typical construction project. Our surface mines are shallow. Extraction is done by bulldozers, scrapers, front-end loaders and dump trucks.

I think we all recognize that MSHA must deal with a broad range of mining conditions, and an equally broad range of risks. I also believe that you can see that our mine sites are uncomplicated and relatively free from hazard in relation to other forms of mining.

We believe there are four provisions of Senate bill 1173 that will give our company added flexibility and more effectively address safety and health problems at each mine site.

First, we believe it is unnecessary to require two inspections annually if the mine has met certain criteria, such as a low number of disabling injuries. In 1982, our four operating facilities worked 606,000 man-hours and experienced 138 lost work days as a result of work-related injuries, for a severity rate of 45.6. The national average for 1980 to 1982 for SIC Classification 3295—that is minerals and earth/ground and otherwise treated—was 100. I may footnote that statistic in that 98 percent of our injuries were either sprained backs, sprained ankles, or small cuts of hands and other extremities in the workplace—very minor injuries.

Second, we support the provision of S. 1173 that would require the abatement of mandatory penalties for all violations other than significant and substantial violations. If the violation is corrected in a timely manner, this provides an incentive for the operator who commits a nonserious violation to correct it before the penalty is applied.

Third, Lowe's strongly supports the elimination of mandatory training hours for new surface miners, allowance for on-the-job training, and flexibility in annual retraining of workers. Our company is vitally interested in its workers' safety. It makes good economic sense to adopt such a philosophy. But it does not make good economic sense to establish a fixed number of hours for training which may have no bearing whatsoever on increasing the safety of the company's workers.

At Lowe's, we have an excellent safety program that provides, in a comprehensive manner, a safe workplace. We even have a safety incentive and award program for our employees. Much of our safety program is included in our safety manual, which I will make available to the subcommittee members for their inspection.

We believe our current safety program, including the manner of training of our workers, is effective, as evidenced by our safety record. We believe a well-tailored program which, under the proposed legislation, would be approved by MSHA, more effectively and efficiently addresses the issue.

Finally, we support the provision of Senate bill 1173 that provides for consultation and assistance visits. We believed this cre-

ates an atmosphere of cooperation between the agency and the operator which will result in expeditious correction of minor infractions and provide better opportunity for the resolution of more serious problems if they do arise.

I would be remiss, Mr. Chairman, if I did not also share with the committee the philosophy of our founder and chairman, Mr. Edward Lowe, who not only established our successful family owned business, but through his introduction of Kitty Litter in 1947, created a significant U.S. industry. Mr. Lowe defines his family business to include all 490 of his employees, each of whom he regards in a very personal way as part of his company family. He has maintained for the 36 years of the company's existence a continuous commitment to his workers' safety and health.

I appreciate this opportunity to come before the subcommittee to share our company's views on this important legislation.

If there are any questions, I would be happy to answer them.

[The prepared statement of Mr. Miller follows:]

TESTIMONY OF JOSEPH MILLER
LABOR AND HUMAN RESOURCE COMMITTEE
SUBCOMMITTEE ON LABOR
JULY 26, 1983

Mr. Chairman, I am Joseph Miller, President and Chief Operating Officer, of Lowe's, Inc., headquartered in South Bend, Indiana. Lowe's is one of this country's largest producers of absorbent clay products. We manufacture over 400,000 tons of absorbent clay each year for such diverse uses as cat box fillers, oil and grease absorbents, and agricultural pesticide carriers.

I am here today to testify in support of S. 1173. Our company, because it extracts clay from surface mines, is under the jurisdiction of the Mine Safety and Health Administration. Since the enactment of the Mine Safety and Health Act of 1977, we have actively sought to secure through MSHA, the Congress, and the Federal Courts, a rule of reason in the administration of the Act. We believe several of the requirements are simply not appropriate to our type of mining. From the inception of the Act, we saw that significant expense, both to our company and to MSHA, would be incurred without increasing our workers' safety. We view S. 1173 as a proper resolution of the concerns we raised.

Lowe's is a member of the Sorptive Minerals Institute, a trade association composed of absorbent clay manufacturers, with its offices here in Washington. The SMI has issued a policy statement in support of S. 1173. I have submitted a copy of that statement with my written remarks. Although I believe my comments are generally consistent with the SMI policy, if you find any variation, please remember my address is on behalf of Lowe's and not SMI.

I think, to begin, it would be helpful if I briefly describe our production process. First, raw clay is extracted, through surface mining, at one of our four mine sites in Tennessee, Illinois, Missouri, or California. The raw clay is then transported to nearby production facilities where it is crushed, dried and screened. Thereafter, it moves along the production line and is packaged for sale under such well known brand names as Kitty Litter, Tidy Cat, and Lowe's Safety Absorbent, or sold in bulk to chemical companies for further manufacture and sale in the agri-marketplace.

Our mine sites are uncomplicated and relatively free from hazards in relation to other forms of mining. Our surface mines are very shallow and all extraction is done by bulldozers, scrapers,

front-end loaders, and dump trucks. We sub-contract the mining operation. Our sub-contractors use a total of thirteen people to operate all four mine sites. With the exception of the sub-contractors and management, rarely do our employees go upon the mine sites. They serve in processing, packaging, shipping, and quality control, and may work as far as fifteen miles from the extraction area. Even for those directly involved in the mining operation, the risks are essentially the same as you would find at the excavation site of a typical construction project.

I think we all recognize MSHA must deal with a broad range of mining conditions, and an equally broad range of risks. The flexibility built into S. 1173 allows MSHA to properly and efficiently deal with these variations as they occur at each mine site.

I would like to address the provisions of S. 1173 specifically. First, we believe it is unnecessary to require two inspections annually if the mine has met certain criteria, such as a low number of disabling injuries. In 1982, our operating facilities worked 606,000 man hours and experienced 138 lost work days as a result of work related injuries, for a severity rate of 45.6. By comparison, the national average (1980-82) for SIC Classifi-

cation 3295 (minerals and earth/ground and otherwise treated) was 100. During the first 5 1/2 months of 1983 we experienced only 2 reportable loss time injuries throughout our entire operation -- a loss time rate of less than 1.0. We operate two plants in Missouri that have not had a loss time accident in over two years; there have been no citations issued at either of these plants during the same period. In short, we believe we have an admirable safety record and should be treated in a manner which reflects this experience.

Secondly, we believe that mandatory penalties for all violations, other than significant and substantial violations, should be abated if the violation is corrected in a timely manner. This provides an incentive for an operator who commits a non-serious violation to correct it before a penalty is assessed.

Third, Lowe's strongly endorses the elimination of mandatory training hours for new surface miners, allowance for on-the-job training, and flexibility in annual re-training of workers. Our company is vitally interested in its workers' safety. It makes good economic sense to adopt such a philosophy. It does not make good economic sense, however, to establish a fixed

number of hours for training which may have no bearing whatsoever on increasing the safety of the company's workers. In 1979, our company estimated the training costs under the Act to be \$180,000.00 per year. We would gladly spend that much and more if we thought there were any correlation between the requirements and worker safety.

We have in place at Lowe's an excellent program which provides, in a comprehensive manner, for a safe workplace. This program includes a corporate safety policy, a safety orientation and training program, good housekeeping guidelines and procedures, employer/employee safety responsibility, general safety inspecting and reporting program, operational checklist, accident investigation procedures and reporting requirements, general safety rules, plant safety committees, instruction on basic first aid techniques, and maintenance of a complete medical program involving pre-employment physicals and regular employee health surveillance. Additionally, employees are motivated to work more safely through safety incentives and awards. Much of our safety program is included in our safety manual which I will make available to the Committee for Member's inspection.

We believe that our current safety program, including the manner of training our workers, is effective as evidenced by our safety record. Imposing a mandatory training hour requirement, in our estimation, does not serve to enhance the safety of our workers. Rather, we think our experience is testimony to the fact that a well-tailored program, which under the proposed legislation would be approved by MSHA, more effectively and efficiently addresses the issue. Indeed, it does not seem reasonable to establish arbitrary standards that may, in fact, fall short of full protection in some cases.

Finally, we support the provision of S. 1173 that provides for consultation and assistance visits. We believe this creates an atmosphere of cooperation between the agency and the operator which can only result in the expeditious correction of minor infractions and provide a better opportunity for the resolution of more serious problems if they do arise.

In summary, I come before you as the Chief Operating Officer of a medium-sized company, significantly impacted by the Mine Safety and Health Act, and offer the benefit of our experience. We submit to you that our program provides greater safety assurance

than compliance with the arbitrary standards. Our safety record speaks for itself in that regard. And, while the changes in training requirements are perhaps most important to us, the other modifications set forth in the Bill speak directly to the rule of reason that we have long sought with respect to MSHA regulation. They lend a sense of fairness and mutual respect to the MSHA-employer relationship which will surely result in greater safety in the workplace. I appreciate the opportunity to come before this Committee today and will gladly supplement my remarks at your request.

SMI POLICY STATEMENT
REGARDING THE
FEDERAL MINE SAFETY AND HEALTH ADMINISTRATION ACT

SMI supports amendments to present laws and regulations that would reduce the burden on day-to-day mining operations caused by unjustified and costly mandatory requirements where those requirements do not contribute to the safety and health of mine workers. SMI encourages voluntary and cooperative efforts among government, industry and labor organizations to improve mine safety and health.

SMI supports, at a minimum, the following changes to the Federal Mine Safety and Health Administration Act:

- o Eliminate the requirement that surface mines be inspected twice yearly where the mine has met certain safety standards.
- o Allow flexibility in the training of miners.
- o Allow inspectors to pay "courtesy calls" to operating mines and recommend changes, rather than issuing citations.
- o Eliminate mandatory fines for first instance violations and for all non-serious violations that are corrected properly.
- o Allow for variances from health standards to permit the use of respirators and earmuffs in appropriate situations.
- o Provide operators of mines with an affirmative defense in those instances where the violation is caused by an individual miner in contravention of company rules or mandatory safety standards.

XXXXX

Approved unanimously by the SMI Board of Directors on July 13, 1983.

Senator NICKLES. Thank you very much, Mr. Miller. We appreciate your comments.

Mr. Conger.

Mr. CONGER. Good morning, Mr. Chairman.

I, too, am pleased to appear today before your committee on behalf of the American Mining Congress, regarding Senate bill 1173.

Founded in 1897, the Mining Congress is a national trade association that represents the producers of most of America's metals, coal, industrial and agricultural minerals and the manufacturers of mining and mineral processing machinery.

The most important goal of the mining industry is the maximum possible reduction of occupational injuries and illnesses. Over the last 10 years, we have made significant progress toward achieving this goal, but we will not be satisfied until we have eliminated the avoidable threat of injuries and illnesses from our mines. The health and safety of our employees is of primary importance.

Therefore, we find it necessary to speak out against legal constraints that do not contribute to improved health and safety and are, in fact, counterproductive to the achievement of our goals.

We have repeatedly testified before Congress to express our concerns regarding those sections of the 1977 Federal Mine Safety and Health Act that we believe require refinement.

We have also submitted extensive comments to the Mine Safety and Health Administration regarding the urgent need for regulatory reform.

We are pleased that MSHA has initiated regulatory reform proceedings and that Congress is considering amendments to the act.

We support Secretary Ford B. Ford's efforts to expeditiously reform many outdated and burdensome regulatory requirements that no longer serve to advance the safety and health of our miners. Such reform is essential to the success of our safety efforts and the economic viability of our mining industry.

It is important, however, not to lose sight of the fact that the root cause of the industry's problems with the mine safety and health legal regime is the act's overwhelming emphasis on enforcement, often at the expense of accident prevention. We contend that our common goals can only be achieved by focusing enforcement efforts on serious hazards and balancing enforcement with cooperative programs aimed at reducing the incidence of work-related injuries, illnesses and deaths.

The industry supports many of the concepts contained in S. 1173, but we note that the bill addresses only a few of our major concerns. As such, the bill is merely a first step toward achieving urgently needed legislative reform.

The 1977 act indiscriminately requires mandatory enforcement inspections at all mines, regardless of their safety records, and severely restricts the consultative nonenforcement visits at our operating mines. The act requires mandatory citations and fines regardless of the seriousness of the violations involved and requires abatement of the violations before legal review is available. The result is that inspectors are generally viewed as policemen rather than safety professionals who could provide constructive assistance.

The shotgun approach of the mandatory inspection requirements, when combined with the mandatory requirements for the issuing of citations and assessing fines, prevents the Secretary from applying MSHA's resources in an effective way, and this inhibits operators from seeking consultation from the agency.

S. 1173 would begin to solve some of these problems by permitting MSHA to conduct nonenforcement consultative visits at operating mines. AMC supports this provision, although we believe that clarification is warranted to assure that visits be conducted only at the request of the operator. Further, for the program to be effective, operators must be permitted to request assistance without the fear of retaliatory enforcement activities.

S. 1173 would eliminate the currently mandated two annual surface mine inspections and provide the Secretary with the flexibility to use his surface inspection resources where he feels they are needed. The Secretary should be authorized to focus the agency's resources on the prevention of accidents by allowing the use of inspection personnel on the basis of need. The concepts embodied in S. 1173 would begin to permit a better utilization of the Secretary's resources.

We note, however, that MSHA conducts many other types of inspections in addition to the mandatory ones. It is the large number of so-called spot inspections, in addition to the mandatory ones, that can result in disruption and confrontation. MSHA should have the discretion to focus its enforcement and inspections activities upon those locations whose safety records demonstrate that enforcement is warranted.

Efficient utilization of MSHA's enforcement resources and cooperation among all parties is essential to achievement of the goals of the 1977 act. By eliminating penalties for nonserious violations that are abated in a timely fashion, S. 1173 would ease the current contentious atmosphere that results from the issuance of citations and fines for even the most trivial of violations. We note, however, that a technical amendment is needed to the bill to address section 110 of the act in order to carry out the bill's intent of allowing non-penalty notices for violations not deemed significant and substantial.

Mr. Chairman, your bill would promote the cooperation among labor, industry, and Government that is necessary to improve safety and health in the mines. Further, the amendment providing for nonpenalty notices of violation would help MSHA focus its enforcement powers on serious violations while still requiring that all violations be abated.

Mr. Chairman, these are the provisions of S. 1173 that AMC considers most important in achieving our goal of continually improving the safety and health of the Nation's miners. We stress that there are other major provisions of the act that require amendment, and we note that these are addressed at length in our written, formal presentation. Some of these that are extremely important to the furtherance of health and safety are: One, an amendment that would require MSHA to promulgate its regulations through formalized rulemaking procedures with the right of cross-examination; two, an amendment that would allow operators to seek variances in achieving health standards just as they are now

permitted to petition the agency for an alternate, but equally effective means of compliance with safety standards; and three, an amendment similar to the provisions of the Occupational Safety and Health Act which would allow for a stay of enforcement if an operator challenged an alleged violation in good faith and could demonstrate that such a stay would not be hazardous to the miners.

In summary, S. 1173 resolves several problems stemming from the 1977 act, but it is silent as to other major issues. The need for amendments is apparent. When one views the current statutory requirements, one finds that regulations are promulgated without being subjected to the test of cross-examination, and variance procedures are limited. The act mandates blanket inspection requirements regardless of the particular mine's safety history and prohibits consultive assistance visits without enforcement for operating mines. The act requires citations and penalties for even the most trivial violations and fails to provide a balance between fair enforcement and consultive services. In essence, many provisions of the act result in a gross misallocation of resources and foster confrontation rather than the cooperative efforts necessary for a meaningful health and safety program.

We applaud this committee's efforts in examining the burdensome provisions of the 1977 act and hope that S. 1173 when passed will be expanded to address the deficiencies we have identified.

Thank you very much.

[The prepared statement of Mr. Conger follows:]

**AMERICAN
MINING
CONGRESS**

FOUNDED 1897
SUITE 300
1920 N STREET NW
WASHINGTON
DC 20036
202/861-2800
TWX 710-822-0126
J. ALLEN OVERTON JR.
PRESIDENT

TESTIMONY OF THE AMERICAN MINING CONGRESS

BEFORE

THE SUBCOMMITTEE ON LABOR

SENATE LABOR AND HUMAN RESOURCES COMMITTEE

Presented by

HARRY M. CONGER

Chairman and President, Homestake Mining Company

and

Vice Chairman, American Mining Congress

Good morning. Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to testify on behalf of the American Mining Congress regarding S. 1173, the "Federal Mine Safety and Health Amendments Act of 1983."

Founded in 1897, AMC is a national trade association that represents the producers of most of America's metals, coal, industrial and agricultural minerals, and the manufacturers of mining and mineral processing machinery, equipment and supplies.

The most important goal of the mining industry is the maximum possible reduction of occupational injuries and illnesses. Over the last ten years we have made significant progress toward achieving this goal, but we will not be satisfied until we have eliminated the avoidable threat of injuries and illnesses from our mines.

The health and safety of our employees is of primary importance to us for several reasons. First, we must eliminate

the human suffering that results from injuries and illnesses. Second, good safety practices result in better morale and improved productivity. And, third, it is simply good business economics to reduce the cost associated with injuries and illnesses since we are faced with ever-increasing compensation and medical costs.

For these reasons, we find it necessary to speak out against legal constraints that do not contribute to improved health and safety and are in fact counterproductive to the achievement of our goals. We have repeatedly testified before Congress to express our concerns regarding those sections of the 1977 Federal Mine Safety and Health Act that we believe require refinement. We have also submitted extensive comments to the Mine Safety and Health Administration (MSHA) regarding the urgent need for regulatory reform.

We are pleased that MSHA has initiated regulatory reform proceedings and that the Congress is considering amendments to the Act.

We support Secretary Ford B. Ford's efforts to expeditiously reform many outdated and burdensome regulatory requirements that no longer serve to advance safety and health. Such reform is essential to the success of our safety efforts and the economic viability of the mining industry.

It is important, however, not to lose sight of the fact that the root cause of the industry's problems with the mine safety and health legal regime is the Act's overwhelming emphasis

on enforcement, often at the expense of accident prevention. We contend that our common goals can only be achieved by focusing enforcement efforts on serious hazards and balancing enforcement with cooperative programs aimed at reducing the incidence of work related injuries, illnesses and deaths.

The industry supports many of the concepts contained in S. 1173, but we note that the bill addresses only a few of our major concerns. As such, the bill is merely a first step toward achieving urgently needed legislative reform.

The 1977 Act indiscriminately requires mandatory enforcement inspections at all mines, regardless of their safety records, and severely restricts consultive nonenforcement visits at operating mines. The Act requires mandatory citations and fines regardless of the seriousness of the violation involved and requires abatement of the violations before legal review is available. The result is that inspectors are generally viewed as policemen rather than safety professionals who could provide constructive assistance.

The "shotgun" approach of the mandatory inspection requirements, when combined with the mandatory requirements for issuing citations and assessing fines, prevents the Secretary from applying MSHA's resources in an effective way and inhibits operators from seeking consultation from the Agency.

S. 1173 would begin to solve these problems by permitting MSHA to conduct nonenforcement consultive visits at operating mines. AMC supports this provision, although we believe that

clarification is warranted to assure that visits be conducted only at the request of the operator. Furthermore, for this program to be effective, operators must be permitted to request assistance without the fear of retaliatory enforcement activities.

S. 1173 would eliminate the currently mandated two annual surface mine inspections and provide the Secretary with flexibility to use his surface inspection resources where needed. The Secretary should be authorized to focus the agency's resources on the prevention of accidents by allowing the use of inspection personnel on the basis of need. The concepts embodied in S. 1173 would begin to permit a better utilization of these resources. We note, however, that MSHA conducts many other types of inspections in addition to the mandatory inspections. It is the large number of so called "spot" inspections, in addition to the mandatory inspections, that can result in disruption and confrontation. MSHA should have the discretion to focus its enforcement and inspection activities upon those locations whose safety records demonstrate that enforcement is warranted.

Efficient utilization of MSHA's enforcement resources and cooperation among all parties is essential to the achievement of the goals of the 1977 Act. By eliminating penalties for non-serious violations that are abated in a timely fashion, S. 1173 would ease the current contentious atmosphere that results from the issuance of citations and fines for even the most trivial violations. We note, however, that a technical amendment is needed to S. 1173 to address Section 110 of the Act in order to

carry out the bill's intent of allowing nonpenalty notices for violations not deemed "significant and substantial." Mr. Chairman, your bill would promote the cooperation among labor, industry and government that is necessary to improve safety and health. Further, the amendment providing for nonpenalty notices of violation would help MSHA focus its enforcement powers on serious violations while still requiring that all violations be abated.

Mr. Chairman, these are the provisions of S. 1173 that AMC considers most important in achieving our goal of continually improving the safety and health of the nation's miners. We stress that there are other major provisions of the Act that require amendment and we note that these are addressed at length in our written formal presentation.^{1/} Some of these that are extremely important to the furtherance of health and safety are: (1) an amendment that would require MSHA to promulgate regulations through formalized rulemaking procedures with the right of cross-examination; (2) an amendment that would allow operators to seek variances from health standards just as they are now permitted to petition the agency for an alternate, but equally effective, means of compliance with safety standards; and (3) an amendment, similar to the provisions of the Occupational Safety and

^{1/} We request that our written testimony be made a part of the record.

Health Act, which would allow for a stay of enforcement if an operator challenged an alleged violation in good faith and could demonstrate that such a stay would not be a hazard to miners.

In summary, S. 1173 resolves several problems stemming from the 1977 Act, but is silent as to other major issues. The need for amendments is apparent when one reviews the current statutory requirements. Regulations are promulgated without being subjected to the test of cross-examination, and variance procedures are limited. The Act mandates blanket inspection requirements, regardless of a particular mine's safety history, and prohibits consultive assistance visits without enforcement for operating mines. The Act requires citations and penalties for even the most trivial violations and fails to provide a balance between fair enforcement and consultive services. In essence, many provisions of the Act result in a gross misallocation of resources and foster confrontation rather than the cooperative efforts necessary for meaningful safety and health programs.

We applaud this Committee's efforts in examining the burdensome provisions of the 1977 Act and hope that S. 1173, when passed, will be expanded to address the deficiencies we have identified.

Thank you very much for permitting me the opportunity to testify on behalf of the American Mining Congress.

July 26, 1983

Senator NICKLES. Thank you, Mr. Conger.

Mr. Woods.

Mr. WOODS. Mr. Chairman and respected members of the subcommittee, I am associated with the Al Johnson Construction Co. of Minneapolis, Minn. We are general contractors who do heavy industrial construction operations. I am a member of the Associated General Contractors of America and appear today on behalf of the association.

I am accompanied by Mr. Dennis Bradshaw and Mr. Michael Fanning of the agency Washington staff; also represented here is Ms. Sue Loomis, in the room.

In the 6 short years since passage, there has been much controversy surrounding the Mine Safety and Health Act and its administration. Since enactment, AGC has been committed to obtain a transfer from MSHA to OSHA of surface construction at the mine site. Additionally, AGC seeks transfer from MSHA to OSHA of clay, stone, sand, and gravel operations. AGC has submitted statements and testified previously before this and other committees concerning our reasons for a transfer. We continue to prefer a transfer in the belief that OSHA requirements are more than adequate for constructive contractors and that MSHA resources can best be used for mine safety. However, because of administration opposition to the full transfer of responsibilities, which we believe would be a more productive use of Government resources, we are supporting many aspects of S. 1173 which will tend to alleviate some of the problems that MSHA has needlessly created for construction contractors.

We commend Senator Nickles for addressing in S. 1173 some of the problems of the Mine Safety and Health Act. We further commend former Assistant Secretary Ford for bringing these issues to public attention. We agree with Mr. Ford's statement to Congress that MSHA and the mining community might benefit from somewhat greater flexibility than this law currently allows. Changes to the act are long overdue.

Today, I would like to spend a few minutes providing the committee with AGC's views on 1173.

First, during the introduction of the bill, it was indicated that S. 1173 would remove mandatory penalties for all violations of the act other than significant and substantial if the violation is abated. Unfortunately, the bill language fails to address section 110(a) of the act. We believe that this is simply the result of a drafting oversight, and we urge the committee to adjust the bill to reflect former Assistant Secretary Ford's intent. Indeed, we find that the language in Congressman Erlenborn's bill, H.R. 3338, more closely reflects what we interpreted Mr. Ford's intent to be on the issue of mandatory penalties.

Second, we take exception to the portion of S. 1173 which would exempt from MSHA coverage any coal or other mine operated, controlled or supervised by any State or political subdivision thereof. Such exemption would not place the affected operations under OSHA jurisdiction, except in the case of State-plan States. AGC objects to this type of exemption because construction contractors would face the added burden of complying with MSHA regulations while in competition with exempted public agencies. We find no

logic in proposals which appear to argue that public policy in the form of legislation is good for the private sector but should not apply to the public sector. If the improved safety and health of employees is the objective, we see no merit in exempting governmental agencies.

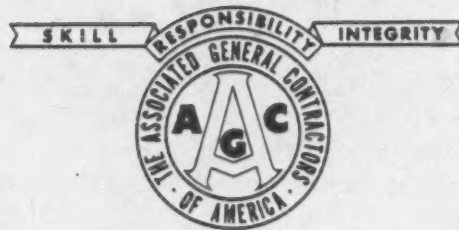
Finally, we are concerned over the regulatory discretion provided under the legislation. Such discretion is often subject to the attitudes of those in office. For that reason, we urge the committee to review those portions of the act which would allow discretionary powers and consider more specific legislative guidance or in the alternate, insure that the committee report provides appropriate direction.

We thank the committee for the opportunity to address some of our concerns regarding the Mine Safety and Health Act, and we are prepared to answer any questions you might have.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Woods follows:]

TESTIMONY OF
CHRIS F. WOODS
FOR
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
PRESENTED BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND HUMAN RESOURCES
JULY 26, 1983
on
S.1173



AGC is:

- * More than 32,000 firms including 8,500 of America's leading general contracting firms responsible for the employment of 3,500,000-plus employees;
- * 112 chapters nationwide;
- * More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utility facilities.

Mr. Chairman and respected members of the subcommittee, my name is Chris F. Woods of Al Johnson Construction Company. I am a general contractor performing heavy-industrial construction operations. I am a member of the Associated General Contractors of America (AGC) and appear today on behalf of the association.

I am accompanied by Dennis Bradshaw and Michael Fanning of the AGC Washington staff.

AGC's commitment to worker safety dates back to 1927 when the association first published its Manual of Accident Prevention in Construction. Today, the Manual is in its sixth edition. AGC has also published a Guide for Voluntary Compliance with OSHA as a means of making OSHA standards understandable and practical for application on construction jobsites. In the area of training, AGC provides a Safety Training Course for Construction Supervisors which has been utilized by schools, joint apprenticeship programs, chapters, firms and individuals. This is but a brief glimpse of the overall safety efforts which AGC has voluntarily initiated in order to assure the safety and health of our employees.

Another important AGC safety publication is our MSHA Guide which was published by AGC to properly inform construction contractors about the most recent federal safety law affecting the construction industry, the Federal Mine Safety and Health Act of 1977 (MSH Act).

In the six short years since passage, there has been much controversy surrounding the MSH Act and its administration. Since enactment, AGC has been committed to obtain a transfer from MSHA to OSHA of surface construction at the mine site. Additionally, AGC seeks transfer from MSHA to OSHA of clay, stone, sand and gravel operations. AGC has submitted statements and testified previously before this and other committees concerning our reasons for a transfer. We continue to prefer a transfer in the belief that OSHA requirements are more than adequate for construction contractors and that MSHA resources can best be used for mine safety. However, because of Administration opposition to the full transfer of responsibilities, that we believe would be a more productive use of government resources, we are supporting many aspects of S.1173 which we believe will alleviate some of the problems that MSHA has needlessly created for construction contractors.

Today, I would like to spend a few minutes outlining some of the concerns the construction industry has with the MSH Act and then provide the committee with AGC's views on S.1173.

One of the main problems construction contractors face with the MSH Act is the requirements of 24 hours of training for employees having no experience and 8 hours of refresher training every 12 months. Consider, as an example, the training requirement's impact on a small to medium-size highway contractor who owns a sand and gravel or stone operation as an adjunct to his business. The contractor will typically work his employees both on highway projects and aggregate operations, as the need arises. To subject his employees to lengthy training with each move between the highway and aggregate operation is simply redundant and uneconomical. Construction workers are currently exposed to training requirements through other federal safety and health laws and in many cases through apprenticeship or other training programs. Additionally, the MSH Act mandated training must be implemented through a Mine Safety and Health Administration (MSHA) approved plan and taught by an MSHA-approved trainer. Employers must compensate their employees at normal working wages for the time spent on training and also pay the costs associated with certifying instructors. To the typical employer, this presents a severe economic burden.

Congress has recognized the inequity of the training requirements for certain surface mining operations by prohibiting MSHA's enforcement of these training requirements in the Department of Labor Appropriations bills for several years. Also, former Assistant Secretary Ford of MSHA has testified that he would support elimination of the 24 and 8 hour training requirements in favor of "appropriate training."

We further suggest that MSHA recognizes the value of previous construction training because the agency does not currently require any training requirements for surface construction workers not involved in the production or extraction process. This has been true since the inception of MSHA.

The training requirements are not our only source of concern. Currently, MSHA is required to conduct two complete annual inspections at every surface mine regardless of the mine's safety record. This seems to be a rather poor use of inspection forces which might be more adequately directed toward underground mines.

Another significant problem is the Act's requirement to issue citations for all violations of the Act with mandatory fines. Even minor "housekeeping" violations are assessed monetary penalties. This automatically creates an adversary relationship between the inspector and the employer. If the goal is improved safety, there should be a concentration of efforts on correcting dangers on a cooperative basis.

Mandatory penalties also affect the status of compliance assistance visits. Currently, compliance assistance visits are only conducted at non-operational mines. If compliance assistance visits are to be effective, they should be at mines which are producing because this is where problems are most evident. Employers are not encouraged to request an inspection of an area of concern, knowing that the inspector is required to cite anything and everything which he has reason to believe is a violation of any applicable MSH Act standard. This scheme of enforcement precludes an employer seeking the advice of a knowledgeable safety professional in the person of the MSHA inspector.

We commend Senator Nickles for addressing some of the problems we have cited in S.1173 which the Subcommittee is currently considering. We further commend former Assistant Secretary Ford for his bringing these issues to public attention. We agree with Mr. Ford's statement to Congress that "MSHA and the mining community might benefit from somewhat greater flexibility than this law [the MSH Act] currently allows." Changes to the MSH Act are long overdue.

We would like to make the following comments on S.1173. First, during the introduction of the bill it was indicated that S.1173 would remove mandatory penalties for all violations of the Act, other than significant and substantial, if the violation is abated. Unfortunately, the bill language fails to address Section 110(a) of the Act which mandates penalties for all violations of the Act. We believe that this is simply the result of a drafting oversight and we urge the committee to adjust the bill to reflect former Assistant Secretary Ford's intent. Indeed, we find that the language in Congressman's Erlenborn's bill (H.R.3338) more closely reflects what we interpreted Mr. Ford's intent to be on the issue of mandatory penalties.

Second, we take exception to the portion of S.1173 which would exempt from MSHA's coverage "any coal or other mine operated, controlled, or supervised by any state or political subdivision

thereof." Such exemption would not place the affected operations under OSHA jurisdiction except in the case of state-plan states. AGC objects to this type of exemption because construction contractors would face the added burden of complying with MSHA regulations while in competition with exempted public agencies. Private concerns should not face constraints in their pursuit of business, especially when competing with government entities. We find no logic in proposals which appear to argue that public policy in the form of legislation is good for the private sector but should not apply to the public sector. If the improved safety and health of employees is the objective, we see no merit in exempting governmental agencies.

Finally, we are concerned over the regulatory discretion provided under the legislation. Such discretion is often subject to the attitudes of those in office. For that reason we urge the committee to review those portions of the Act which would allow discretionary powers and consider more specific legislative guidance or in the alternate ensure that the committee report provides appropriate direction.

We thank the committee for the opportunity to address some of our concerns regarding the Mine Safety and Health Act and we are prepared to answer any questions you might have.

Senator NICKLES. Thank you, Mr. Woods.

I thank the witnesses for staying within the 5-minute time limit, because I have a markup that begins in 5 minutes. Senator Grassley, I appreciate your being here, and hope you can chair the hearing when I leave.

Do you have any questions of our panelists?

Senator GRASSLEY. No.

Senator NICKLES. I have just a couple of quick questions.

Mr. Miller, you mentioned Lowe's being a family business. How many of the 490 people are actively working in the mines?

Mr. MILLER. Thirteen. But they are really not part of our company. We subcontract that out to off-season road construction companies.

Senator NICKLES. In subcontracting the mining of the clays, has your company found that the MSHA regulations, as they are today, overburdensome in the fact that maybe they are overregulating and not really that constructive as far as protecting the health and safety of the workers?

Mr. MILLER. The direction and effect of MSHA is toward mine safety, and the critical mass of our workers are, frankly, in assemblyline activity and processing inside activity, so it is not really totally appropriate.

Senator NICKLES. Mr. Conger, you mentioned the positive impact of recognizing the historical patterns of safety or conversely, injury records that various companies have. Do you think it makes more sense to apply limited resources to MSHA to employ those inspectors and have them inspect the mines which have the highest incidences of injuries?

Mr. CONGER. Yes, I certainly do, Senator, and mines vary greatly as to the type of mining methods used, depending on the condition

of the ground in which you are mining and the metal or minerals you are mining. So, site-specific enforcement is a key part, we think, to a successful safety program on a national basis. Certainly, it would take into account mines that have enjoyed, through hard work and good management, high safety records, and they should be rewarded for that. Targeted enforcement would further encourage that, I believe.

Senator NICKLES. You are looking primarily at the objective as safety, not so much in just mandating the number of inspections, the amount of fines, or not allowing onsite consultation. You are really looking toward safety, instead of the number of visits.

Mr. CONGER. Absolutely. That should be the name of the game.

Senator NICKLES. Mr. Woods, you mentioned in your statement that you felt like it was possibly inappropriate to exempt mine sites that are owned or operated by a State or political subdivision of a State. Do you feel that exemption would make the workers who are employed by the city or the State better protected under MSHA than they would be if they were protected under OSHA? I am coming from the safety standpoint again. I understand your argument of private versus public and the inequality or the competitiveness there. What about from the safety standpoint?

Mr. WOODS. I guess from a safety standpoint, what we are saying, really, is that there are only a few States that have an OSHA plan of some sort where they would really be covered by some form of safety. If they are not under a State plan, then they have no coverage at all, either under MSHA or OSHA—that is my understanding, and that, I think, is what we are concerned about. If they are in competition with private industry they—the municipal operations—have some financial benefits if they have no training requirements.

Senator NICKLES. Many of these county operations are like some of the smaller road contractors or something similar who use a gravel pit or sand pit. Are the MSHA requirements for training and onsite inspections necessary for those types of operations?

Mr. WOODS. I will defer here.

Mr. BRADSHAW. Senator, I think our position is that if our private operations are going to be covered by MSHA standards and inspections, we would argue they should also be covered.

Senator NICKLES. Should those types of classifications, gravel and sand, in your opinion, be under MSHA?

Mr. BRADSHAW. Are you talking about currently?

Senator NICKLES. No. Should they be?

Mr. BRADSHAW. Yes, that is our position.

Senator NICKLES. I thought your position was in opposition to that.

Mr. WOODS. We are saying no, that surface mining should not be, as I understand it.

Mr. BRADSHAW. If you are saying, Senator, currently what our position is with respect to coverage of the agencies who involve themselves in what we would argue are construction operations, we would argue if our facilities are going to be covered by MSHA, they should also be covered by MSHA.

Senator NICKLES. Yes, I understand that; but do you still feel that your surface mining or sand and gravel should be under MSHA in the private?

Mr. BRADSHAW. What we are saying is we would prefer to have it transferred to OSHA.

Senator NICKLES. OK. That is what I was trying to imply.

Gentlemen, I appreciate your appearance before us. Thank you for your input and suggestions.

On our next panel we have Joe Main, who is administrator, Department of Occupational Health and Safety for the United Mine Workers of America, and John Sheehan, legislative director for the United Steelworkers of America.

Gentlemen, we welcome you again before this committee.

Mr. Main.

STATEMENT OF JOSEPH A. MAIN, ADMINISTRATOR, DEPARTMENT OF OCCUPATIONAL HEALTH AND SAFETY, UNITED MINE WORKERS OF AMERICA, WASHINGTON, D.C., AND JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA, WASHINGTON, D.C.

Mr. MAIN. Mr. Chairman, Senators, my name is Joseph A. Main, and I am the administrator for the UMWA's Department of Occupational Health and Safety, here representing the United Mine Workers on a bill of vital interest to the membership of our organization. We, by the way, represent approximately 70 percent of the coal miners that mine the Nation's coal.

A quick review of Senate bill 1173, which is also known as the administration's bill, shows that the amendments would remove those miners who are protected now at operations which are controlled, owned, or operated by state or political subdivisions from coverage by the act, and also shows that it would eliminate requirements of MSHA to conduct two annual inspections at each surface mine each year. It also sets up a scheme that would not require mine operators to be fined for violations of the Mine Act and health and safety regulations. It also defines the term, "significant and substantial," to correlate with the definition established by the Mine Review Commission in the National Gypsum case, and it also establishes the consultation and assistance visits by the Mine Health and Safety Administration, which would be conducted either by MSHA's own initiative or at the request of mine operators.

We have reviewed the bill to determine what benefits it holds to improve the health and safety conditions that the Nation's coal miners must face. We have reviewed the bill to see how it would prevent another recurrence of the McClure No. 1 disaster or another explosion like the one that occurred at the Homer City mine about 2 weeks ago. We have reviewed it just to see how it would prevent deaths and injuries in the Nation's coal mines.

We have found that it has not, either singularly or collectively, provided one change that would stop these tragic deaths and injuries, nor stop the carnage that we have in the Nation's coal fields. Even in light of the recent disasters and the fact that nearly 1,400 coal miners have died on the job in the last 10 years, we see no

substantive changes in Senate bill 1173 that would improve those conditions.

The bill would, however, provide for operators that choose to ignore and violate the law, an advantage, an advantage at the direct expense of the health and safety of the Nation's coal miners.

We have been critical of the current approach of the Federal mine health and safety program and the weakened enforcement and how that translates into the deaths and injuries, such as the 122 coal miners that lost their lives on the job last year, and the ones that have died in explosions so far this year, -and countless others. Explosions, as we are all aware of, ripped through two coal mines just a few weeks ago.

We have been critical of the fact that penalties have been substantially reduced against mine operators who violate the law, and that violations once considered very serious are now considered nonserious and tagged with the non-S and S-type violation which carries the new, \$20 minimum penalty.

We agree that there is a problem, but the answer is not the elimination of mandatory inspections of surface mines, the elimination of hours of training for miners, elimination of penalties for mine operators who violate the law, or the transforming of the agency into a consulting and assistant agency.

The answer is pure and simple. It is to administratively establish a strong, recognized enforcement agency that will set a level of enforcement of which all industry will recognize and respect.

The effects of the weakened enforcement are seen by reviewing the past record at the McClure No. 1 mine, where an explosion occurred on June 21, claiming the lives of seven miners. MSHA, by the way, in that area has an S and S rate for the first quarter of this year of approximately 8 percent. Now, it is noted that the S and S policy now instituted by MSHA is also carried as a definition in a current Senate bill 1173. On a 2½-day inspection following the explosion, MSHA cited more violations than it did the entire 6 months preceding the disaster. That fact alone should tell somebody something. And not only that, but 37 out of the last 40 violations that were processed prior to the explosion were only give a meager, \$20, non-S and S penalty violation assessment. These included very serious violations, violations where there were hundreds and thousands of feet of accumulations of coal dust, of coal spillage; violations that included lack of ventilation in the working-places the miners were required to work in. These were treated as nonserious violations in the enforcement scheme by MSHA. Our concern is that Senate bill 1173 reinforces that kind of philosophy. The easy treatment that was given to the company at McClure, we feel that the company adjusted to that and operated their mine accordingly. What concerns us is the fact that whatever the enforcement level is by the agency will be adjusted to by industry. McClure No. 1, as stated, reflects that tragedy.

In 1982, 77 percent of the total violations issued by MSHA were considered non-S and S, and with the changes proposed in Senate bill 1173, that would mean that up to 77 percent of the total violations last year, had this bill been in effect, would have possibly received no penalty. What adds to our disturbance over this is the fact that in February of this year, we sent a letter to the Mine

Health and Safety Administration, citing hundreds of violations that were very serious violations, very serious infractions of the health and safety standards, that MSHA treated as nonserious, giving a non-S and S penalty assessment. Those violations included 4½ percent of methane was allowed to accumulate in the mine. Those violations included long distances of accumulations of coal dust. They involved violations of the roof control plan, where their was extended distances of unsupported roof. We all know that roof falls is the No. 1 killer in the coal industry.

These kinds of violations, this philosophy, the philosophy that is encompassed by Senate bill 1173, in our opinion, will do nothing to foster improvement in the coal mining industry.

The only change that can occur, as we see it, is a change of the direction of the agency in improving the enforcement level in the mining industry.

Thank you very much.

[The prepared statement of Mr. Main follows:]

UNITED MINE WORKERS OF AMERICA

TESTIMONY ON SENATE BILL #1173

JULY 26, 1983

Joseph A. Main, Administrator
Department of Occupational
Health and Safety
United Mine Workers of America

UNITED MINE WORKERS OF AMERICA'S
TESTIMONY, SENATE BILL 1173

Senate Bill 1173, which is based on the administration's recommended changes to the Federal Mine Safety and Health Act of 1977, would alter the Act in the following manner: (1) It would eliminate penalties for those violations determined not to be "significant and substantial;" (2) It would eliminate the mandatory requirement of inspections at all surface coal mines; (3) It would eliminate the mandatory hours of training for surface and underground miners, as well as the mandatory retraining for those miners; and (4) It would essentially transfer the Mine Safety and Health Administration from an enforcement agency into a consulting firm for mine operators.

These changes would ease the burden on those operators that choose to ignore and violate the law. They would lower the recognized enforcement level on a national scale and would jeopardize the health and safety of the nation's miners. The UMWA, therefore, strenuously opposes them.

Penalty System Changes

Under section 105 of the current statute, the Secretary must notify the operator of a proposed penalty for every citation or order issued under section 104. The Senate bill would

create a new enforcement category -- the "notice of violation" -- which would not trigger the necessity of proposing a penalty under section 105. The notice of violation would apply to violations deemed not to be "significant and substantial."

Last year, only 23% of the total violations were considered by MSHA to be "significant and substantial" (or "S & S"). Had the provisions of S. 1173 been in effect, therefore, 77% of the violations cited by MSHA last year would have been subject to no penalty at all. The remaining violations would presumably continue to be assessed under the formula approach. Under MSHA's current assessment figures, the remaining 23% would have been assessed a penalty that averaged only \$80.00.

The removal of a penalty for such a large category of violations removes a major incentive for operators to comply with the mandatory health and safety standards. This fact was made abundantly clear by the figures presented to Congress, prior to the passage of the 1977 amendments, comparing enforcement in the metal/nonmetal mining industry with those in the coal industry. Because there was no mandatory penalty assessment under the metal/nonmetal Act, the level of compliance by those operators was found to be abysmally low. This

led Congress to conclude that the penalty assessment was an effective means of obtaining operator compliance with standards and resulted in the decision by Congress to bring the metal/nonmetal industry under the mandatory penalty assessment system applied to the coal industry. The result, of course, was that all the mining industries were brought under a single enforcement statute: the Federal Mine Safety and Health Act of 1977.

The UMWA agrees that there is a problem with penalties under the current system -- the penalties are much too low to encourage compliance. During the last 2-1/2 years, changes have been made in the penalty system, including a new flat \$20.00 penalty for violations not designated "significant and substantial." This has already resulted in a dramatic lowering of the amount of penalties being assessed against mine operators. Because of the minimal impact of such penalties, the level of operator compliance with mandatory standards is bound to fall off. The UMWA believes the recent Homer City Mine explosion and McClure disaster reflect that fact.

The scheme proposed in the administration bill would, in essence, encourage operators to allow health and safety violations to accumulate rather than to correct them. Why should the operator correct the violations when he can merely await the arrival of the inspection agency, knowing that he

has very good odds of paying either a low penalty or no penalty at all? This scheme would totally undermine the policy of preventing accidents and disease.

The definition of "significant and substantial" contained in S. 1173 is the same one the administration currently uses in connection with safety violations. It is adopted from the description set forth in the decision of the Federal Mine Safety and Health Review Commission in Secretary of Labor v. Cement Division, National Gypsum Co., 3 FMSHRC 822 (1981). The standard has proved totally unworkable in the two-year period that the agency has attempted to apply it in the safety area. Figures comparing enforcement in the various MSHA Districts demonstrate that the standard is so vague and confusing it cannot be uniformly applied by the inspectors in the field.

With regard to health violations, even MSHA has taken the position before the Commission that the National Gypsum standard would be completely unworkable. Many of the health standards -- such as those regulating the level of respirable dust in the mines -- attempt to prevent respiratory diseases. Such diseases are chronic in nature; they develop only after many years of exposure. Except under extreme circumstances, no exposure over a short time period (a week, for example) taken by itself, would be sufficient to cause a "reasonably

serious" disease. It has taken teams of medical researchers and epidemiologists many years to estimate the likelihood of disease, given 30 years of exposure to coal mine dust. In determining whether an overexposure to dust is S & S, however, S. 1173 would require deference to a single inspector (trained as such and neither in medicine nor epidemiology), based on the "particular facts" he observed during a single inspection. Adherence to the standard in S. 1173 would result in none but the most grossly flagrant violations of the dust standard being considered "significant and substantial" and then with little scientific justification.

As indicated above, even MSHA has determined that the standard is unworkable with respect to health violations involving overexposure to regulated substances. MSHA has argued to the Review Commission that the decision of the administrative law judge in Consolidation Coal Company, (Consolidation Coal Co. v. Sec. of Labor, Docket No. WEVA 82-209-R, 2/16/82) should be upheld. In his decision, the judge refused to apply the National Gypsum standard to a violation involving overexposure to coal mine dust. The judge stated that every instance of overexposure constituted a "drop in the bucket," and that "every drop in the bucket ... significantly and substantially contributes to a health hazard."

Elimination of Mandatory Inspections
at Surface Coal Mines

The administration bill would eliminate the requirement that surface mines have two annual inspections each year. The quickest method of eliminating mine operator compliance with mandatory health and safety standards is to eliminate the expectancy of a compliance inspection as the proposed bill would do. This approach would place each surface mine operator on the honor system -- a system which historically has been found to be unworkable.

A surface mine operation is similar to an underground mine, in that conditions constantly change as the coal is mined on a daily basis. Certain hazards are created in the course of mining which must be constantly controlled. These would include extended haulage roads and highwalls, to name a few.

In the last ten years, over 200 coal miners at surface operations have lost their lives. Such appalling figures mean that there is a need to increase inspections -- not eliminate them. The current law provides for discretion by the Secretary to increase the number of inspections at surface

mines. The UMWA would urge this Congress to encourage the Secretary to implement this authority rather than proposing legislation intended to eliminate the mandatory inspections.

Training

In 1977, an historical event occurred in the coal industry. After over a century of coal mining (during which the industry established itself as being the most dangerous in this country), a national requirement was enacted by Congress that required all coal mine operations to train miners on the hazards that injure and cause the loss of life. This was the first major attempt on a national scale to require the mine operators to provide training to miners before they thrust them into this most dangerous occupation. S. 1173 would eliminate the minimum hours of training required in the current statute, leaving the number of hours to be determined instead by the Secretary's discretion.

The main shortcoming of the current training requirements are that they don't provide enough hours. Indeed, our country still lags behind many of the other developed mining countries in Western Europe when it comes to training our miners. This situation is really baffling when one considers that the quality and amount of training have been found to be one of the most important factors in explaining the wide dis-

crepancy in the safety records of various operators. In their recent 1982 study of safety in underground mines, the National Academy of Science found that, "a major upgrading of the educational and training requirements that new and experienced miners, and also supervisors must meet is required if we are to contemplate any substantial improvement in the safety of U.S. Coal Mines." (TOWARD SAFER UNDERGROUND COAL MINES, COMMITTEE ON UNDERGROUND COAL MINE SAFETY, NATIONAL ACADEMY PRESS, WASHINGTON, D.C., 1982) Rather than reducing the number of mandatory hours, the Academy recommended doubling the figure. Since the current number of training hours contained in the statute represents a minimum number of hours, which the Secretary has discretion to increase, there is no need to remove them from the statute, as S. 1173 proposes to do. The only reason for removing the number of hours would be to permit the Secretary to lower the number of training hours from that found to be already insufficient.

Consultation Visits

The administration approach of setting up consultation visits, which is incorporated in the Senate Bill, would refocus the objectives of the Mine Health and Safety Administration. The agency is currently charged with enforcing the statute rather than acting as a "consulting" and "assist-

ing" agency, as proposed. The demands on the agency by mine operators to conduct these types of activities could conceivably tie the hands of the agency's enforcement capability.

The administration's already lax enforcement policy practically amounts to its acting as a consulting firm. Recently, we have seen the level of enforcement of health and safety standards dramatically lowered. Violations such as 4.5% methane, excessive accumulation of float coal dust, electrical hazards, unguarded equipment, and other very serious violations were all treated as not "significant and substantial."

The inspection record at the McClure #1 Mine prior to the explosion on June 21, 1983, reflected this lax approach; 37 out of the last 40 violations at McClure processed by the assessments branch ending June 22, 1983, were assessed the minimum \$20.00 violations. On a 2-1/2 day inspection after the explosion occurred, however, MSHA cited nearly 200 violations -- well over the amount that were cited during the entire first six months of the year. Similarly, after the explosion that occurred at the Homer City Mine on July 3, 1983, MSHA cited close to 100 violations.

The underlying premise of the consultation and assistance visits is that operators violate the law out of

ignorance -- a premise to which the UMWA does not subscribe. Recent events have confirmed the correctness of our view and have indicated that a more cooperative attitude on the part of MSHA is not what is needed.

Less than a week after the Homer City explosion, a fan went down at the Raccoon #3 mine in Ohio. With knowledge of this fact, the operator continued mining coal without ventilation for 1-1/2 hours. The fan stoppage warning system was later found to be intentionally disengaged. MSHA personnel, in accordance with their philosophy of a cooperative and non-adversarial approach, cited the company with the lowest form of enforcement action available, the non-S & S citation. In order to appreciate the inappropriateness of this action, it is necessary to recognize the importance of fans to underground miners. Fans provide vitally important fresh air to miners underground. The fan removes dust, explosive methane gas, and brings in fresh air. Current regulations require miners to be withdrawn from a mine within 15 minutes of fan shutdown. That is why alarm systems are required. They warn of fan failure and allow the withdrawal of the miners to prevent injury or death from explosion. Fortunately, the Raccoon Mine did not explode or claim any lives of the nearly 100 miners underground. MSHA finally took some additional enforcement actions after the UMWA made tough complaints on this matter.

On February 17, 1983, hundreds of violations were submitted to MSHA from the UMWA from a random selection of MSHA inspection reports (see attachment). These violations were serious violations that MSHA had treated as non-serious, reflecting the administration's cooperative approach to mine health and safety.

Events such as these have convinced the UMWA that the problem is not one of getting MSHA to increase its role of consultant, assisting operators in figuring out how to comply with the law. Operators already know how to comply with the law; the problem is in figuring out how to motivate them to do so.

Congress should spend time looking at those problems, which continue to claim the lives, limbs, and health of miners, instead of wasting the taxpayers' money on actions like the present Senate bill, a bill which does nothing more than eliminate the miners' health and safety protections, in order to appease the wishes of mine operators.

Respectfully submitted,

Joe Main, Administrator
Department of Occupational
Health and Safety
United Mine Workers of America

July 26, 1983

Mine Safety and Health Administration



Date		Order ☐ Safety ☐		2 Date	07/13/83	3 Shift	0800	4 Mine No.	2205189
Mine Name				Mine Location				Mine No.	
Bureau District				Bureau Office				Bureau No.	
10 Violation				11a Section and Substantial (see reverse)				11b Written Notice	
12 Citation or Practice				13 Citation or Practice				14 Citation or Practice	
When mine experienced an unplanned stoppage of the main fan at 4:15 pm on 7/12/83 and the action was taken (a) to shut down all persons from the working section and (b) to shut off the power to the fan in a timely manner. The main fan was not repaired and started back up until 5:45 pm on 7/13/83. The fan ran about 90 minutes. The reason for the fan stoppage was that the fan is down more than 15 minutes. The fan power will be shut off and all underground personnel will evacuate the mine. The fan is not to be restarted until the mine fan contractor has taken the fan out of the mine and it is running.									
15 Citation or Practice									
16 Citation or Practice									
17 Citation or Practice									
18 Citation or Practice									
19 Citation or Practice									
20 Citation or Practice									
21 Citation or Practice									
22 Citation or Practice									
23 Citation or Practice									
24 Citation or Practice									
25 Citation or Practice									
26 Citation or Practice									
27 Citation or Practice									
28 Citation or Practice									
29 Citation or Practice									
30 Citation or Practice									
31 Citation or Practice									
32 Citation or Practice									
33 Citation or Practice									
34 Citation or Practice									
35 Citation or Practice									
36 Citation or Practice									
37 Citation or Practice									
38 Citation or Practice									
39 Citation or Practice									
40 Citation or Practice									
41 Citation or Practice									
42 Citation or Practice									
43 Citation or Practice									
44 Citation or Practice									
45 Citation or Practice									
46 Citation or Practice									
47 Citation or Practice									
48 Citation or Practice									
49 Citation or Practice									
50 Citation or Practice									
51 Citation or Practice									
52 Citation or Practice									
53 Citation or Practice									
54 Citation or Practice									
55 Citation or Practice									
56 Citation or Practice									
57 Citation or Practice									
58 Citation or Practice									
59 Citation or Practice									
60 Citation or Practice									
61 Citation or Practice									
62 Citation or Practice									
63 Citation or Practice									
64 Citation or Practice									
65 Citation or Practice									
66 Citation or Practice									
67 Citation or Practice									
68 Citation or Practice									
69 Citation or Practice									
70 Citation or Practice									
71 Citation or Practice									
72 Citation or Practice									
73 Citation or Practice									
74 Citation or Practice									
75 Citation or Practice									
76 Citation or Practice									
77 Citation or Practice									
78 Citation or Practice									
79 Citation or Practice									
80 Citation or Practice									
81 Citation or Practice									
82 Citation or Practice									
83 Citation or Practice									
84 Citation or Practice									
85 Citation or Practice									
86 Citation or Practice									
87 Citation or Practice									
88 Citation or Practice									
89 Citation or Practice									
90 Citation or Practice									
91 Citation or Practice									
92 Citation or Practice									
93 Citation or Practice									
94 Citation or Practice									
95 Citation or Practice									
96 Citation or Practice									
97 Citation or Practice									
98 Citation or Practice									
99 Citation or Practice									
100 Citation or Practice									

ATTACHMENT B

United Mine Workers of America



TELEPHONE
AREA CODE (202) 642-7200

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N.W.

Washington, D.C.
20003

February 17, 1983

Mr. Joseph Lemonica, Administrator
for Coal Mine Safety and Health
Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

Dear Joe:

After reviewing the figures published by M.S.H.A. showing that the percentage of violations cited as S. & S. (Significant and Substantial) has dramatically reduced, we have started a review of inspections reports to determine the type of violations that are now considered non serious by M.S.H.A.

The number of violations that were considered non-serious (Non S. & S.) has increased to an unbelievable level of 77% and I understand that figures, just released for the last quarter of 1982, show that they increased to the level of 88%, with only 12% being considered S. & S., during that quarter, thus many subject to the mere \$20.00 penalty.

The results of our review is just as astounding. Our review on the inspection records showed that there is a wide spread disregard for serious violations. We have enclosed several inspection records that highlight some of the serious problems with M.S.H.A.'s enforcement approach on this matter.

Attachment A, for example, cites a violation at the Shannon Branch Mine where 4.5% of methane was found at a bleeder tap in return air. An order likely should have been issued on this instance, yet the violation was treated as a simple non serious violation.

Attachment B, for example, cites a violation where an unsupported roof was not posted against entry. Again, not only should an order have been issued to prevent miner entry in the area, but this violation was also treated as a non serious violation.

Attachment C, for example, cites a violation where rollers were stuck on a belt take up with coal accumulated around them. Again, this violation was treated as only a non serious violation.

Attachment D addresses a health violation where a sample showed a dust concentration level nearly $2\frac{1}{2}$ times the respirable dust level allowed by law. This violation was treated as a non serious.

Attachment E covers an inspection report at Coleman & Yates Coal Company, Haysi, Virginia on December 9th through 15th, 1982. Twelve violations were cited during that inspection and all were considered non serious violations.

They contained violations for; equipment without cabs or canopies, lack of rock dust; accumulations of coal dust up to 10 inches deep; water lines without outlets to couple onto for firefighting; coal dust deposits for distances of 150 feet; unguarded discharge rollers; insufficient amount of air on the working section; and mines escapeways not properly marked. These violations not only should have been considered serious, the only item left to cause a disaster from the information in the reports, was a simple spark.

Attachment F is a report on an inspection at the Armco 10-A Mine, Sundial, West Virginia conducted from August 3rd through September 20th, 1982 where 49 violations were cited and 46 of the total were considered non serious. Those violations included among other violations; a shuttle car cable with exposed bare power wires; a shuttle car cable splice with inner power circuits exposed; a belt feeder cable splice with exposed wires twisted together; inadequate ventilation in working faces; permissibility violations on two shuttle cars, two scoops and one miner; power center (not permissible) located within 80 feet of pillar line; power left on equipment between shifts; loose coal and coal dust allowed to accumulate in shuttle car roadways 5 inches deep; belt fire suppression system inoperable; and a shuttle car panic bar inoperable.

Attachment G covers an inspection conducted on September 27th through December 20th, 1982 at the Shoemaker Mine in M.S.H.A. District 8. Out of the 71 violations cited during the inspection, 69 were cited as Non S. & S. Those violations cited included; loose coal, coal dust and float coal dust permitted to accumulate throughout the mine; permissibility violations on two loading machines, and two shuttle cars; inadequate ventilation; fire prevention equipment inoperable (fire suppression systems, fire sensors and water valves);

high voltage cable being unguarded where miners cross; conveyor belt take up pulleys unguarded; uncoupling devices not provided on mine cars requiring persons to place themselves between cars to uncouple them; and an opening in the preparation plant transfer building through which people could fall into a stone pit.

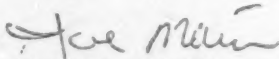
This matter has reached the point of such seriousness that we are requesting an immediate response from M.S.H.A., on your policy of citing violations. M.S.H.A.'s acceptance of: the accumulation of methane near explosives ranges in a coal mine; mines exposed to bad roof and rib conditions; exposed energized circuits; equipment operation in the face without cabs and canopies; miners exposed to unsupported tops; and several other types listed in these reports as non serious type violations too numerous to mention is beyond our comprehension.

The viewing of these violations by M.S.H.A., as non S. & S., strikes in direct opposition to the Congressional intent in the passage of the 1977 Mine Act.

I am requesting a response on the matters raised in this letter, along with M.S.H.A.'s policy outline on citing Non S. & S. violations and how that is translated to the M.S.H.A. inspectors.

Your actions on this matter will be appreciated.

Sincerely,



Joe Main, Administrator
Department of Occupational
Health and Safety

cc: R. Trunka
C. Roberts

Senator NICKLES. Mr. Sheehan.

Mr. SHEEHAN. Thank you, Mr. Chairman.

My name is Jack Sheehan, and I am legislative director of the Steelworkers Union.

I would like to indicate at the beginning that I am very pleased to see that Senator Randolph has joined us this morning, because his record in this area of workers' protection and health is not only well-known, but very well respected by all of us here.

Our union represents most of the organized noncoal miners in this country, including metal, nonmetal, stone, and sand and gravel miners.

At the outset, Mr. Chairman, let me state that our union does oppose the administration's proposed amendments to MSHA. We believe that the act is basically sound in itself and needs no change. Moreover, the proposed amendments would only serve to weaken several important provisions.

Now, as currently constituted, MSHA has served to effectively protect the safety and health of American miners. Indeed, between 1978 and 1980, the overall mine fatality rate declined 33 percent, and disabling injury rates also dropped by 9 percent. More recent indicators likewise demonstrate that this trend has continued. In the noncoal mining industry where the steelworkers predominate, for example, the actual number of fatalities have declined dramatically from over 100 in 1980 to 67 in 1982, the lowest number ever recorded, and I think that that is good not only for the act, but obviously for the workers working those mines.

While the data for 1982 was complicated by the fact that for the first half of the year, certain surface mining activities—and I refer to sand, gravel, and stone—were exempted by an MSHA rider, the overall rate in fatality rates has progressively declined since 1978. And while this is not to suggest that all is well in the mining industry—67 noncoal and 122 coal mine deaths in 1982 are still too many—nevertheless, it does indicate that since enactment of OSHA, the mines have indeed become safer.

I quote in this section, Mr. Chairman, other statistics that I think we could just leave for the record, and I would like to move, actually, to some comments with regard to the specific amendments that are recommended in the bill that the administration submitted through you.

The first comment has to do with the exclusion of State mines. Suffice it to say, Mr. Chairman, that if these mines are excluded from the coverage of MSHA, there is no coverage being guaranteed for these miners at all, and certainly, there is no OSHA coverage at all being provided.

Second, I note from the testimony of other witnesses that this will create unfair competitive disadvantages as among mines operating in this field.

No 2, with regard to the elimination of mandatory inspections, of all of the provisions of the bill, this one seems to be among the most damaging. Our experience with safety and health laws has convinced us that without an effective inspection program, enforcement of the law is severely retarded. Thus, we believe that the required annual mandatory surface mine inspections have contributed to the overall decline in fatal accident and other injury rates in

the surface mines. Suffice it to say that the criteria in the act that would direct the Secretary, in using his discretion, to inspect these nonmandatory inspection mines is much too vague and I suspect will result in the fact that many mines will not be inspected.

With regard to another item in the bill, namely, the mandatory citation, like the elimination of the mandatory inspections, the proposal to eliminate mandatory citations for violations other than significant and substantial is aimed at an overall weakening of MSHA's enforcement mechanism. There has always been a continuous movement, Mr. Chairman, somehow or the other, to try to avoid the payment of a penalty where there is a violation.

Now, I recognize that the legislative history with regard to the significant and substantial, the interpretation of that, caused a great deal of controversy in the act, so much so that as I understand it, at one time, almost all the citations were in this area. But the National Gypsum case does try to provide some definition of the provision. But by picking up that definition of the decision and simply saying that no other violation than significant and substantial shall be subject to citation I think is really flying far in the face of what is needed. Whereas before, this applied to all violations, and is now limited to a smaller category, as the mine workers testified, only 23 percent of the violations were given S and S citations. Now, the bill is affirming that everything else below that category is not to be considered of any seriousness at all. That is certainly a tragic amendment, if enacted into the act.

The next item to which I would make a brief reference is the mandatory training requirement. Obviously, testimony has been presented continuously before this committee as to the need for miner safety training. We certainly feel that the provisions in the act are minimal indeed. An 8-hour refresher training over a period of a whole year cannot be considered to be exorbitant. When we are talking about new miners in this field, certainly, if you read the statistics on fatalities, on accidents, those requirements in the act for 24 hours for surface miners are not exorbitant.

I close with reference to the compliance assistance visits which in effect are onsite consultations without the need for any citations. The Assistant Secretary of Labor has testified to, I think, what is an admirable record on his effort to provide a great deal of consultation to the industry. He has made a good record in this regard. Certainly, the act has not been an inhibition to that, and the continuation of this section of the act certainly should not inhibit further advances in the consultation presently being offered.

I close with one comment on the question that you asked. I think it is significant as to the impact of this on the budget changes. We are somewhat surprised, Mr. Chairman, that the administration has requested a decrease in the MSHA budget amounting to around \$3 million, based on the assumption that this bill would be passed by the Congress. That is prejudging not only what Congress might do, but perhaps prejudging the merits of these provisions by just arbitrarily going up and asking for a decrease in the budget. I do not know whether you would consider that blackmail or not, but it is certainly an odd way to ask for funds by expecting Congress to eliminate or certainly substantially modify essential provisions of the act.

Thank you.

[The prepared statement of Mr. Sheehan follows:]

TESTIMONY OF
JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR
UNITED STEELWORKERS OF AMERICA

before the
SENATE LABOR SUBCOMMITTEE

on
PROPOSED MINE SAFETY AND HEALTH AMENDMENTS

JULY 26, 1983
WASHINGTON, D. C.

Mr. Chairman, members of the Senate Labor Subcommittee, my name is John J. Sheehan and I am the Legislative Director of the United Steelworkers of America.

Our union represents most of the organized noncoal miners in the country, including metal, nonmetal, stone and sand and gravel miners.

At the outset, Mr. Chairman, let me state that our union is opposed to the Administration's proposed amendments to the Mine Safety and Health Act (MSHA). We believe that the Act is basically sound and need not be changed. Moreover, the proposed amendments would only serve to weaken several important provisions.

As currently constituted, the Mine Safety and Health Act has served to effectively protect the safety and health of American miners. Indeed, between 1978 and 1980, the overall mine fatality rate declined 33 percent and disabling injury rates dropped 9 percent.

More recent indicators likewise demonstrate that this trend has continued. In the noncoal mining industry, for example, the actual number of fatalities have declined dramatically from over 100 in 1980 to 67 in 1982, the lowest number ever recorded. While the data for 1982 was complicated by the fact that for the first half of the year certain surface mining activities were exempted from MSHA by an appropriations rider, the overall trends in fatality rates have progressively declined since 1978.

While this is not to suggest that all is well in the American mining industry -- 67 noncoal and 122 coal mine deaths in 1982 are still far too many -- it does indicate that since the enactment

- 2 -

of MSHA, the mines have indeed become safer.

It also means that now is not the time to begin tampering with the Act. Indeed, there is some evidence to suggest that without MSHA protection, the mines will soon become more hazardous. This, at least is what the raw data indicate with respect to the surface stone, sand and gravel mines that were exempted from MSHA during the first seven months of 1982.

During this period, 15 surface stone, sand and gravel miners were killed compared to only 5 during the same period of 1981. Since data collection was suspended during the 1982 exemption period, only the raw numbers are available without comparable annual fatality rates. However, the published rates available for the last two quarters of 1982 indicate that the fatality rate for surface stone mining, for example, doubled from .03 in 1981 to .06 in 1982. The sand and gravel rates remained the same as the 1981 rate, while those for surface metal and nonmetal mines (which remained covered under MSHA) fell dramatically, from .04 to 0 in metal and from .04 to .01 in nonmetal surface mines.

Again, while the data for 1982 must be approached with some caution, the available evidence strongly suggests a direct correlation between MSHA coverage and the degree of hazards in the mines. We believe that any weakening of the law will result in higher numbers of mine deaths and injuries.

As you know, Mr. Chairman, S. 1173 would:

- exclude from MSHA mines that are owned, operated, controlled or supervised by any state or political subdivision thereof;

- 3 -

- eliminate the two mandatory annual inspections of all surface mines, subjecting such inspection to the discretion of the Secretary of Labor;
- eliminate mandatory citations for all mine safety and health violations, restricting such mandatory citations only to violations that are "significant and substantial";
- eliminate mandatory training requirements for all new surface miners, as well as refresher training for all miners;
- expand the "Compliance Assistance Visit" (CAV) program to include producing mine operations.

Exclusion of State Mines

The exclusion from MSHA of mines owned and operated by states or political subdivisions raises the question of adequate safety and health protection for the affected miners. While some of these operations are very small, part-time county gravel pits, we understand that others include rather large-scale underground mines. The question, therefore, is whether the respective states have safety and health programs to effectively protect their miners.

Thus, before the Congress takes any action to exclude these mines, it should undertake a complete examination of the types of mines affected and the adequacy of state and local safety and health programs.

Additionally, there is some question with respect to the status of privately owned mines that may be under a long-term contract or might otherwise be "controlled or supervised" by the state

or political subdivision. The question, of course, is whether such privately owned and operated mines would be excluded under the language of S. 1173, something we would oppose.

Elimination of Mandatory Surface Mine Inspections

Of all the provisions of S. 1173, this one appears to be among the most damaging. Our experience with safety and health laws has convinced us that without an effective inspection program, enforcement of the law is severely retarded.

Thus, we believe that the required annual mandatory surface mine inspections have contributed to the overall decline in fatal accidents and other serious injuries in surface mines. Moreover, the limited experience during the 1982 exclusion of surface stone, sand and gravel mines seems to indicate that without an effective inspection presence, these mines tend to become more hazardous.

In addition, there is very little evidence to suggest that the mandatory surface mine inspections have been burdensome to mine operators. If their mines are safe, then the inspection is of little consequence. On the other hand, if the mine inspections uncover hazardous conditions, then, of course, the inspections were more than necessary. Thus, the positive value of mandatory inspections far outweigh any inconvenience they might cause.

Elimination of Mandatory Citations

Like the elimination of mandatory inspections, the proposal to eliminate mandatory citations for violations other than "significant and substantial" is aimed at an overall weakening of MSHA's enforcement mechanisms.

In the first place, S. 1173's definition of "significant and substantial" is limited only to those violations which are "reasonably likely to result in an injury or illness of a reasonably serious nature." We believe that such a definition is subject to a wide degree of interpretation that very well could exclude from citations a range of serious mine safety hazards. Effective enforcement in such circumstances would thus be diminished. Moreover, this definition invites ambiguity on the part of both mine inspectors and mine operators as to what constitutes a proper safety and health program.

Secondly, as the Committee knows, the current MSHA administration has instituted a policy whereby violations not considered "significant and substantial" are subject to a small, flat penalty assessment if the violations are immediately corrected. According to former MSHA Assistant Secretary Ford B. Ford, "industry has reacted positively to these revisions and we are finding that under these rules the vast majority of violations our inspectors find are being corrected promptly."

If such violations are immediately corrected and thus not allowed to become a safety and health threat, then mandatory penalties should be retained. They do not appear to be much of a burden upon the industry and seem to have a salutary effect. Moreover, the current law -- by making no exceptions -- eliminates the uncertainty and ambiguity that might arise under S. 1173.

We, therefore, believe that mandatory penalties should be retained for all safety and health violations as a proper function of an effective mine safety enforcement mechanism.

Elimination of Mandatory Training Requirements

The proposed elimination of the mandatory 24 hours of training for new surface miners and 8 hours of annual refresher training for all miners, to be replaced with a program developed by the Secretary, raises a number of serious questions.

First is the question of the status of existing training programs in the various mines. Would they remain in force while the Secretary promulgates new regulations and following the issuance of such regulations could they be diluted and still be in compliance? Our concern here is obvious. Training programs developed to comply with the minimum mandatory requirements of existing law ought not be subject to anything less, or rolled back in light of some lesser criteria developed through regulation.

Second, we believe that S. 1173's requirement for the development of regulations that are "at least as effective as" the current training programs is an open invitation for all sorts of various local interpretations and policy constructs.

Finally, we believe that current law is flexible enough to permit the Secretary to approve safety and health training programs that properly prepare miners to work safely. The requirement for 24 hours for new surface miners and 8 refresher hours annually for all miners does not seem to be excessive, and within those constraints there seems to be enough flexibility to develop proper safety training programs.

Compliance Assistance Visits

The proposal to expand MSHA's Compliance Assistance Visit (CAV) program to include producing, as well as nonproducing mines, might

have some merit if:

- (1) its enactment is not tied to other proposed amendments to the MSH Act; and
- (2) it does not drain resources away from MSHA's primary enforcement activities.

Conclusion

In conclusion, Mr. Chairman, our union believes that the Mine Safety and Health Act has proved to be an effective regulatory tool in preventing mine-related deaths and injuries. Indeed, since its enactment there has been a steady decline in fatality and injury rates, except perhaps for the seven-month period in 1982 when certain surface mines were exempted from the Act.

As such, the Act is proper and necessary and ought not be weakened. S. 1173, on the other hand, except perhaps for the proposed GAV expansion, would only serve to dilute what has proved to be an effective enforcement system.

Fatality Accident Rate Per 200,000
Employee-hours Worked

Surface Mines

	1978	1979	1980	1981	1982*
Sand/Gravel	.08	.08	.05	.04	.04
Stone	.07	.07	.07	.03	.06
Metal	.04	.03	.03	.04	.00
Nonmetal	.01	.08	.05	.04	.01
Coal	.03	.02	.03	.03	.03

(Source: Mine Safety and Health Administration)

*NOTE: The 1982 data for surface stone and sand and gravel mines is based only on the last two quarters of the year since data collection was suspended during the first two quarters.

Senator NICKLES. Thank you very much, Mr. Sheehan.

We are very pleased and honored that Senator Randolph has joined us today. He certainly has had a history of leadership in this area, as well as many other areas in the Senate.

Senator Randolph, I have a few questions, and Senator Grassley may also. Do you have opening comments or suggestions you would like to make on this legislation?

Senator RANDLOPH. Chairman Nickles, we are here, all of us, regardless of our length of service on this committee. I commend you for being concerned, regardless of the differences that we may have, in reference to S. 1173. I speak for Senator Grassley in the same way, because membership on the Labor and Human Resources Committee is something that sometimes there are those who avoid serving on a committee of this kind—and I am not critical of those who believe that perhaps there are other committees that are perhaps not more important, but seem to have an attachment for members, which I can understand.

I wish to say only for the record that as a member of this committee at the time we passed the Coal Mine Health and Safety Act, I felt it was so important, Senator Nickles, that I made a plea before our committee that instead of the Occupational Safety and Health Act, which was programed to be passed, acted on, in 1969, and then the Coal Mine Safety and Health program in 1970, I pleaded with the committee to reverse the consideration of those bills, and that was done. In other words, I felt so strongly about the measure of mine safety and health that I believed that the other bill, even though it was very important, why should we delay for 1 year. And that was the picture in those days. And the knowledge of the subject matter has been a continuing challenge to me. And as we consider S. 1173—and I am grateful for your attention to this

subject—I am grateful for the differences of viewpoints that come before a subcommittee or a committee. But this measure which you introduced on April 28 of this year is certainly important. I think it is especially critical at this time, and certainly, it is critical to a State like West Virginia.

I reflect very quickly on coal mine health and safety. It has been said by others, but I shall repeat. We are talking about the realities of life and death in the workplace. The miner faces those facts each day, he or she—and remember, women are mining coal—prepares for work. Mining continues—and this is a fact—as the most hazardous occupation in the United States of America. Every death in mining, I think, has a heartbreaking effect, and when those deaths are multiplied or occur in groups of miners as happens, the tragedy is more difficult for me, and I think you, and anyone, to accept.

Just as devastating as the mine disasters, but not as dramatic, is the deterioration of the miner's health as he or she works with the disabling disease of black lung, a reality. I shall not speak of that this morning.

So we want not to pull back from programs that protect the health and safety of miners. We know that there was one tragedy that occurred, which to me made it very important to act in 1969. We had a breakthrough, and I will use the word, our action in a sense was galvanized, because in that year we had a disaster in West Virginia, as you may have read and know from your study, of the Farmington mine disaster. What occurred in 1968, the latter part of November. There were not a half dozen or a dozen. There were 78 miners who lost their lives in that explosion. It is natural that, as a Senator from West Virginia, I recall that tragedy. I remember talking with the mothers, the wives and the children in the area at the time, and there was doom, Mr. Chairman, and gloom, and there was weeping. Therefore, I do not wish to be dramatic in any sense, but this, Mr. Chairman, in my opinion, is the wrong time, if there is ever a right time, to weaken, as I would see it, the Federal Mine Safety and Health provisions. This is not the time to dilute the enforcement of the standards by removing the mandatory penalties. It is also not the time to reduce the training requirements that have been mandated under the act. It is certainly not the time to remove requirements for surface mine inspections mandated under the law.

Now, I can understand our present administration. I am not a carping critic. It has a viewpoint. And it has been an administration that has wished to deregulate. Well, that is not always advisable, in my opinion. I was one of 9 Senators out of 100 who voted against the deregulation of the scheduled airline industry in the United States. It was wrong at the time it passed, and it is wrong today. And middle America is suffering. The long haul, the big buck—those were the concerns. And mid-America—I can take the cities all over this country—they have weakened and reduced service because of what took place. But that is a subject for another time. I do remember, very quickly, that the minute the act passed, United Airlines, serving just one city in West Virginia, Charleston, our State capitol, moved out without notice. I say without notice, and the record will show that that is true—24 hours. We had helped United to come there, to be the first company to have jet

service in the State of West Virginia. I will only take 30 seconds more. I came into Washington from Pittsburgh, and I saw a 45-foot banner above the ticket office there in the airport of United Airlines, and it said, "Nonstop service from Pittsburgh to Las Vegas." That was the day they pulled out of West Virginia. They were interested in the long haul, the big buck, and under deregulation, they could do exactly as they wanted to do.

I am only saying that I do not speak for the airline carriers, but I felt so strongly that I worked hard on that subject. I went before the Commerce Committee, and I said that in my opinion, the State of West Virginia, not just Charleston and that airport, had been treated shabbily by a carrier. Now, I do not withdraw any of those words today, not at all, or I would not be speaking. But certainly, I think that in the area of deregulation, the administration has gone too far. I think that the regulation of certain industries is very important, and I think mine safety and health is one of these areas that should not be weakened. We might differ whether there is a weakness.

Now, I think we must stand firm on the issues that affect the miners and their safety and health. I will not reduce my commitment to the policies that promote safe and healthful conditions for those who mine coal. I do not intend to support policies that would place miners in further jeopardy—and I use the words advisedly. Too many lives have been lost in the mines; too many miners have been disabled from injury or disease. My commitment to adequate enforcement of the Federal Mine and Safety Act does not waiver.

I appreciate your allowing me to speak in this way. I shall have a complete statement, if it is agreeable, to file in the record, and also, there will be in comity with you and our colleagues, I will be asking a few questions.

Senator NICKLES. Certainly.

Senator RANDOLPH. I do not want to come in and appear as an expert, someone who is seldom right but never in doubt, but I know what the situation is in the West Virginia coal mines, and I know of the energies in the promotion of coal development and also the alternative fuels program which I believe will come into being one of these days. We will have synthetic liquid fuel one of these days, and we will use coal as well as farm products, as well as shale, to bring that about.

Let us remember the words in the 1969 act: "The first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource, the miner."

Now, I think it would be best, Mr. Chairman, in cooperating with you and our colleagues, for you to ask questions of Mr. Main and Mr. Sheehan. I do not want to speak out of turn. I might come in, if we still have the time, thinking in terms of the panels, to ask a question or two, and then, if it is agreeable with you, to file questions.

Senator NICKLES. Certainly.

Senator RANDOLPH. And Senator Nickles, I am appreciative of your service. This is not a pleasantry on this committee.

Thank you.

Senator NICKLES. Thank you, Senator Randolph. I appreciate your statement and the service you have given to this committee,

not only in the 2½ years I have been here, but the several years you have served with diligence in difficult areas.

Let me personally assure you that I agree with much of the thrust of your statement. I do not want to do anything that would jeopardize the health and safety of miners. I appreciate your comments.

[Opening statement of Senator Randolph follows:]

OPENING STATEMENT OF SENATOR RANDOLPH

Mr. Chairman, we are here today to review S. 1173, the Federal Mine Safety and Health Amendments of 1983, introduced by Senator Nickles on April 28, 1983. It is an important subject, especially critical to the people of West Virginia.

I reflect on coal mine health and safety. We contemplate the reality of life and death, a fact a miner faces each day as he or she prepares for work. Mining continues to be the most hazardous occupation in the Nation. Every death in mining is heartbreaking, and when those deaths are multiplied or occur in groups, then the tragedy is more difficult to accept. Just as devastating as mine disasters, but not as dramatic, is the deterioration of a miner's health as a result of the disabling disease of black lung.

Mr. Chairman, as we survey the efforts to protect the health and safety of miners, we recognize that 1969 was a breakthrough for miners. The tragedy that galvanized the Congress into enacting the Federal Coal Mine Health and Safety Act of 1969 was a mine disaster in Farmington, West Virginia on November 20, 1968 when 78 miners were killed in an explosion. I recall that tragedy well, Mr. Chairman. I remember the families of those men who died mining coal. Yes, I visited the area and talked with the widows and their children. There was doom and gloom and weeping. And Mr. Chairman, I remember the men and women who have died in the mines and those who have been injured and disabled as a result of work in the mines since that time. Just to hear the words, Farmington, Buffalo Creek, Scotia, Whitwell, Tennessee and just a month ago, McClure, Virginia, brings a shudder to miners and their families, and brings a shudder to those of us who care about miners and their families.

Mr. Chairman, 1981 was a terrible year for mine safety and health—153 miners were killed that year, and the high fatality rate continued through the first 6 months of 1982. In 1981, we remember coal production suffered because of an 11 week strike.

The total number of miners killed in 1982 was 122, and while there was no strike in 1982, coal production was down considerably, and is even worse in the first quarter of 1983. Indeed, last month, on June 20 1983, the West Virginia Department of Mines indicated that coal production dropped 25 percent in the first quarter compared with the first quarter of 1982. West Virginia produced 27,825,224 tons of coal in the first 3 months of this year, down from 37,133,751 tons from January through March of 1982.

Since the beginning of this year, 1983, only 36 coal miners have lost their lives, compared to 73 deaths at this time in 1982. The reduction of fatalities in 1983 is encouraging, but it is difficult to draw a cause and effect relationship. Some argue that the massive unemployment situation in the coal industry reaching 25 percent overall, and much higher in some areas of Appalachia, has contributed to the improvement in fatality and injury rates. One could argue that with the loss of coal production, only the largest mines remain in operation, and miners with the greatest seniority have been able to retain their jobs. Historically we know that smaller mines are more dangerous and have higher accident rates, and younger, less experienced miners are more likely to be injured. Regardless of the reasons for the decline of coal mine deaths in 1983, and reasonable persons differ, I am pleased with the fact.

Mr. Chairman, this is not the time to weaken the Federal Mine Safety and Health Act. This is not the time to dilute the enforcement of health and safety standards by removing mandatory penalties. It is not the time to reduce the training requirements mandated under the act. It is not the time to remove requirements for surface mine inspections mandated under the law.

This administration has pursued its goal of deregulation in many areas, and mine safety is one of those areas. I believe that we must stand firm on the issues that affect the health and safety of coal miners. As the original sponsor of the 1969 Federal Coal Mine Health and Safety Act, and the 1977 Mine Safety Act, I will not reduce my commitment to policies that promote safe and healthful conditions in the

mines. Nor do I intend to support policies which will place miners in further jeopardy. Mr. Chairman, too many lives have been lost in the mines, and too many miners have been disabled from injury and disease. I will continue to support strong health and safety standards in the mines. My commitment to adequate enforcement of the Federal Mine Safety and Health Act does not waver. Mr. Chairman, I believe in coal, and West Virginia coal in particular, and I use a large portion of my time and energies in the promotion of coal development and alternative fuels from coal, on behalf of West Virginia. We remember the language of the 1969 Act, which states that " . . . the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource the miner."

Senator NICKLES. It is necessary for me to leave to attend the energy markup. Senator Grassley, if you would do me the favor of chairing for the balance of the hearing, I would be most appreciative.

Senator GRASSLEY. Yes.

Senator NICKLES. Thank you very much.

[Whereupon, Senator Grassley assumed the chair.]

Senator GRASSLEY. I have no questions for this panel, so I will turn now to the Senator from West Virginia.

Senator RANDOLPH. Yes, very briefly. I have a question of Mr. Main that I direct to you for your response. One of the most serious concerns that I have with S. 1173 is the proposal to eliminate the two mandatory annual inspections of all surface mines. It would allow the Secretary to establish criteria to determine the minimum number of inspections. I have a feeling that this, frankly, would encourage violations, and you would, perhaps, build up that situation to a time when there seemed to have been injuries, but under the possible changes, there would not be sufficient reason for such inspection. I think that is something that we must carefully check. When does the mine meet the criteria for inspection on a regular basis? Now, prior to enactment of the 1977 law, which mandated the two annual inspections for surface mines and four annual inspections for underground mines, were the mines, Mr. Main or others, as safe? If not, why would we expect mines to become safer without inspections?

Mr. MAIN. Thank you, Senator. Our belief on the inspection of the surface coal mines is that, one, they should without question be mandatory, and there should be no less than two inspections per year. The logic behind this is this, that the expectancy of an inspection itself connotes a safer industry. If there is no anticipated inspection, then the industry will operate along the lines of that assumption.

Senator RANDOLPH. That is a natural reaction.

Mr. MAIN. A natural reaction.

Second, over the last 10 years, there have been over 200 mining deaths at surface mines. To us, that tells us that we need to improve and increase inspections of surface facilities rather than reducing those.

Senator RANDOLPH. Thank you very much.

Now I have a question for you, Mr. Sheehan. I think we know; many of us, the differences between coal mining and noncoal mining. There has been the statement made that surface stone, sand, gravel, metal and nonmetal mines are not engaged in mining activities and should not be covered by the Mine Safety and Health Act. How many workers, Mr. Sheehan, does the USHA represent,

and how are they engaged in mining activities? Are the hazards involved in noncoal surface mines reduced to that point that the mines do not need mandatory inspections; and if you would, could you expand on the compliance assistance visitations. How would this be structured in a way that you, perhaps, could support such a program?

Mr. SHEEHAN. Yes, Senator, I would like to try to comment on that. First of all, I would say that the noncoal mining section of the act comprises about 100,000 to 120,000 miners. This covers all kinds of noncoal mining, not only sand, gravel and stone, but also iron ore, copper, molybdenum, et cetera. There is a wide variety of mining operations included therein. Second, I should comment that it has constantly been reiterated that since you do not work underground, you are not a miner. Now, I think we have brought before this committee, as well as on the House side, people who work in these mines, who would seriously contest that fact that they are construction workers merely because they do not work in underground mining operations. Third, all of our mining journals do talk about the extraction process, and do distinguish it both in terms of substance and in terms of degree from construction-type activity.

I might also mention for the record, as between some of the surface mining operations, that you will find that the noncoal mining operations in certain years have a higher severity rate than the accidents on a surface coal mine. So indeed, we are finding, Senator, that in the noncoal surface mining operations, hazards that are even more severe than on the surface coal mine.

And I would just close with this final comment, which is more in response to your previous question, namely, that this bill does eliminate the mandatory inspections on surface mines. Let me indicate to you what that really means is that most of the jurisdiction that is outside of the coal mining area would be completely excluded from mandatory inspections. That is the impact of that particular amendment. Of course, I am pleased to concur in some comments about Senator Nickles who has been trying holding these hearings. I think one of the reasons I really feel pleased in coming here today is not to have to testify just in behalf of sand, gravel and stone miners. These miners have constantly been threatened with exclusion from the coverage of the act. However, this particular draft of the bill simply eliminates mandatory inspections from all of the noncoal mines, including sand, gravel and stones mines to which I have just briefly alluded.

Senator RANDOLPH. Thank you.

What I now say refers to my earlier comments on the 1969 act. But I just recalled that in 1969 when we passed the legislation, of the 18 members now on our committee, including the able Senator who is presiding, Eagleton, Pell, Kennedy, and myself were here at the time it was passed, the 1969 act—and we are still all members of the committee of 18—and sometime, if your schedule would permit, I wish that the members who did not go through the series of hearings in subcommittee and committee, might review the testimony that caused these programs that we are discussing, especially the act of 1969, the conditions that caused us to act, I think, wisely, hopefully, in the interest of industry, an industry that includes the owners and the operators. I understand their problems and want to

be helpful and have been, and I have been helpful also to the men and women who mine that coal.

Thank you.

Senator GRASSLEY. Mr. Sheehan, I said I did not have any questions, but I do have some questions that Senator Nickles left for me to ask, and I would appreciate it if you could respond to them.

The first question is: Would you provide for the subcommittee the raw data concerning surface mines that you referred to on page 2 of your testimony?

Mr. SHEEHAN. Yes.

[The following was received for the record:]

Lynn R. Williams
International Secretary

Frank S. McKee
International Treasurer

Lloyd McBride
International President

Joseph Odorich
International Vice President
(Administration)

Leon Lynch
International Vice President
(Human Affairs)

United Steelworkers of America

AFL-CIO

815 16TH ST., N.W., WASHINGTON, D.C. 20006

Suite 706

Phone: (202) 638-6920

August 11, 1983

The Honorable Don Nickles
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Nickles:

In response to your question concerning the source of the data on page 2 of our mine safety and health testimony of July 26, 1983, all the data were taken from a regular MSHA publication "Mine Injuries and Worktime Quarterly." Enclosed for your information is a copy of the summary sheet for the January-December, 1982 period.

Several things about the 1982 data should be noted.

First, the published data for surface stone and sand and gravel mines only covers the last two quarters of 1982 because of the rider suspending MSHA activities in these mines during the first two quarters.

According to MSHA testimony, there were a total of 67 non-coal fatalities in 1982. However, as you can see from the enclosed MSHA document only 50 noncoal fatalities were recorded. It is, therefore, reasonable to assume that the 17 unrecorded deaths occurred in those mining operations excluded from MSHA during the first two quarters of 1982. Thus, our testimony on page 2 should be corrected from 15 to 17 fatalities that occurred during the exemption period.

These numbers are easily verifiable from MSHA or OSHA, which undertook some investigatory actions during this period.

Sincerely,

John J. Steehan
John J. Steehan
Legislative Director

JJS/hhh
Enclosures

Mine Injuries and Worktime, Quarterly



U.S. Department of Labor
Mine Safety and Health Administration
Directorate of Technical Support
Division of Mining Information Systems

January-December 1982

CC: Jack Sheehan
Dave Mallino
4/11/83



CONTENTS

<u>Text</u>	<u>Page</u>
Limitations and scope of data	1
Definitions and notes	2
 <u>Charts and Tables</u>	
Chart 1. - Number of fatal injuries in the U.S. mining industries in each quarter of 1980, 1981, and 1982	3
Table 1. - Number of injuries, injury-incidence rates per 200,000 employee-hours, average number of workers, employee- hours, and production, by kind of coal mined and work location, January-December, 1982	4
Table 2. - Number of injuries, injury-incidence rates per 200,000 employee-hours, average number of workers, and employee-hours, by mineral industry and work location, January-December, 1982	5
Table 3. - Number of injuries, average number of workers, employee- hours, and coal production, by work location, State, Nation, and mineral industry, January-December, 1982 . . .	6
Table 4. - Number of injuries by mineral industry, work location, and accident classification, January-December, 1982 . . .	17

LIMITATIONS AND SCOPE OF DATA

* Surface mining or milling of stone, clay, colloidal phosphate, sand and *
 * gravel; States or political subdivisions thereof; and independent *
 * construction contractors at surface areas of mines were exempt from MSHA *
 * administration and enforcement of the Federal Mine Safety and Health Act *
 * of 1977 during the first half of calendar 1982. *

* Effective July 18, 1982, House Resolution 6685 restored MSHA's inspec- *
 * tion and other regulatory authority over surface stone, clay, sand and *
 * gravel, and colloidal phosphate mining or milling operations and over *
 * surface construction activities of independent contractors. Injury and *
 * employment data for the mining operations restored to MSHA under House *
 * Resolution 6685 were collected only for the third and fourth quarters *
 * of calendar 1982 and are included in appropriate categories in this *
 * publication. *

TABLE 2 - NUMBER OF INJURIES, INJURY-INCIDENCE RATES PER 200,000 EMPLOYEE-HOURS, AVERAGE NUMBER OF WORKERS, AND EMPLOYEE-HOURS, BY MINERAL INDUSTRY AND WORK LOCATION, JANUARY - DECEMBER, 1982
(PRELIMINARY DATA - REFER TO NARRATIVE FOR LIMITATIONS AND SCOPE OF DATA)

MINERAL INDUSTRY AND WORK LOCATION	FATAL	TOTAL INCIDENCE RATE	NFDR	MPH INCIDENCE RATE	MDI	WEL INCIDENCE RATE	ALL OCCURRENCES	ALL INCIDENCE RATE	AVERAGE NUMBER OF WORKERS	EMPLOYEE- HOURS OF REPORTED
UNDERGROUND MINES										
METAL-----	10	.12	1,030	6.65	609	5.17	1,866	11.93	19,338	31,270,082
NONMETAL-----	17	.09	302	4.05	276	2.31	448	5.20	8,090	14,926,125
STONE-----	1	.06	71	4.06	19	1.06	242	5.30	1,811	3,387,850
TOTAL, UNDERGROUND MINES-----	28	.10	1,412	5.68	1,004	4.04	2,442	9.83	29,364	49,583,998
SURFACE MINES										
METAL-----	-	-	431	2.84	224	1.48	655	4.32	17,501	30,321,564
NONMETAL-----	1	.01	137	2.03	133	1.97	270	4.02	13,496,300	13,496,300
STONE-----	0	.09	112	2.46	180	3.55	490	3.55	38,720	25,376,465
SUBTOTAL, SURFACE MINES-----	1	.09	680	2.46	337	1.71	1,415	3.48	60,911	95,184,711
SAND AND GRAVEL-----	5	.04	145	1.29	80	1.71	220	2.48	27,210	27,210,000
TOTAL, SURFACE MINES-----	14	.03	1,025	2.24	567	1.24	1,606	3.50	83,889	91,708,953
TOTAL, MINES-----	40	.08	2,437	3.45	1,571	2.22	4,048	5.73	113,253	141,399,149
MILLS										
METAL-----	2	.01	636	2.05	439	2.03	1,077	4.99	24,216	43,184,468
NONMETAL-----	6	.04	548	3.42	276	1.72	824	3.48	32,871	32,871,000
STONE-----	1	.01	449	2.63	173	1.02	621	2.48	25,222	35,031,350
TOTAL, MILLS-----	9	.02	1,631	2.99	888	1.63	2,528	4.63	80,193	109,254,089
INDEPENDENT SHOPS AND YARDS										
METAL-----	1	.14	8	1.10	11	1.51	20	2.74	701	1,457,548
NONMETAL-----	-	-	-	1.21	-	-	1	1.21	15	28,347
STONE-----	1	.12	0	1.09	11	1.33	21	2.95	159	164,808
TOTAL, SHOPS AND YARDS-----	2	.04	8	3.98	22	2.84	42	6.90	875	1,646,703
ALL MINES, MILLS AND SHOPS										
METAL-----	21	.04	2,114	3.98	1,483	2.79	3,618	6.81	61,758	106,234,044
NONMETAL-----	14	.05	987	3.26	585	1.93	1,566	5.24	37,820	60,486,463
STONE-----	10	.09	831	2.64	372	1.02	1,183	3.69	66,538	63,070,112
SUBTOTAL-----	45	.04	3,932	3.42	2,390	2.08	6,367	5.94	166,116	229,790,619
SAND AND GRAVEL-----	5	.04	145	1.29	80	1.71	220	2.48	28,205	27,210,000
TOTAL, MINES/MILLS/SHOPS-----	50	.04	4,077	3.23	2,470	1.96	6,587	5.23	194,321	252,301,941
OFFICERS										
METAL-----	-	-	9	.10	11	.12	20	.22	9,857	17,937,429
NONMETAL-----	3	-	3	.05	5	.09	8	.14	7,175	11,158,391
STONE-----	-	-	3	.06	-	-	3	.06	10,820	10,820,124
SAND AND GRAVEL-----	-	-	1	.06	1	.06	2	.11	4,767	3,628,145
TOTAL, OFFICERS-----	-	-	16	.07	17	.08	33	.15	32,619	43,001,099
SUMMARY TOTAL (INCLUDES OFFICE- WORKERS)										
METAL-----	21	.03	2,123	3.42	1,494	2.41	3,638	5.86	71,615	124,171,403
NONMETAL-----	14	.04	990	2.76	590	1.65	1,584	4.45	44,995	71,644,854
STONE-----	10	.03	834	2.27	372	.88	1,166	3.18	77,358	73,357,236
SUBTOTAL-----	45	.03	3,947	2.93	2,406	1.79	6,398	4.79	193,968	266,123,979
SAND AND GRAVEL-----	5	.04	145	1.29	80	1.71	220	2.48	28,205	27,210,000
TOTAL, SUMMARY-----	50	.03	4,093	2.77	2,487	1.68	6,620	4.49	226,940	293,311,040

Senator GRASSLEY. What percentage of the mines account for the majority of the workplace injuries and fatalities; and as a additional follow up to that, wouldn't focusing limited MSHA resources on these more hazardous workplaces have a more direct impact on workers' health and safety?

Mr. SHEEHAN. Well, we could refer to the committee the statistical documents that you make reference to. With regard to your third question, Senator, I am not aware of the fact that the MSHA administration is talking about limited resources. I am certainly aware of the fact that they did discharge quite a large number of personnel during the period in which these sand, gravel, and stone mines were in limbo, neither inspected by OSHA nor by MSHA. However, it is our understanding, and I think it can be adequately supported, that there are enough sources at MSHA to conduct the inspections that are required.

Third, in response to that, I think it may be a somewhat ironic dilemma that whereas the administration is talking about reducing the number of inspections, Senator, at these mines, it is at the same time talking about increasing the number of consultative visits at these same mines, which would be at the request of either the Administrator or of the mine operator. Now, if there is a question of using limited resources that amendment seems to belie that contention. How are we going to replace routine inspections with a very heavy dose of concentrated compliance and at the same time conduct the onsite consultations. So I am relating really not so much to the advisability of an onsite consultation, but only to the question that limited resources.

Senator GRASSLEY. The third question that Senator Nickles requested I ask is: Since S. 1173 does not alter training for underground miners, how much training does the typical new underground miner receive, and who pays for this training?

Mr. MAIN. The bill, to the extent that it affects retraining, would affect training for underground miners, Senator.

The question as to the amount of training that is received by underground miners other than that would be what is required currently in the 1977 Mine Act, which is 40 hours' training. And that is currently as required by the Mine Act, to be paid by the mine operator.

Mr. SHEEHAN. And also, Senator, I think it might be interesting, and maybe the committee might like to undertake a study of mining training techniques. This provision has been in the act now since 1977. By way of a rider, it does not apply to the sand, gravel, and stone mines, but all other mines have now complied with the training provision, and so I am suggesting—the system of training of miners—has been absorbed by our mining establishment. Our information is that it is adequately in place, but, be that as it may, the cost has long been absorbed. It is an ongoing one, but it has been there since 1977.

Senator GRASSLEY. I want to thank the panel very much, and thank the Senator from West Virginia for his contribution.

I would now like to call panel 3, the last panel: James M. Christie, manager of the Corporate Safety Administration, Vulcan Materials, Birmingham, Ala.; my constituent, Jeffrey C. Reverud, Chairman of the National Limestone Institute Safety Committee, and

president of Pederson Brothers of Harmony, Minn.; and Lewis Pettinos, president of George F. Pettinos, Inc., Ardmore, Pa.

What I would like to do—because Senator Denton from Alabama is on his way here to introduce you, Mr. Christie—is start with Mr. Roverud, my constituent, and then go on to Mr. Pettinos just to give Senator Denton some additional time to get here.

So would you proceed, please, Mr. Roverud, and welcome back to Washington. I usually only see you during the month of February, when you have your institute banquet.

STATEMENT OF JEFFREY C. ROVERUD, CHAIRMAN, NATIONAL LIMESTONE INSTITUTE SAFETY COMMITTEE, AND PRESIDENT, PEDERSON BROTHERS OF HARMONY, INC., HARMONY, MINN., ACCOMPANIED BY JIM WILLIAMS, PRESIDENT, NATIONAL LIMESTONE INSTITUTE, AND RANDY RAWSON, VICE PRESIDENT AND DIRECTOR OF GOVERNMENTAL AFFAIRS; JAMES M. CHRISTIE, MANAGER, CORPORATE SAFETY ADMINISTRATION, VULCAN MATERIALS CO., BIRMINGHAM, ALA., ON BEHALF OF NATIONAL CRUSHED STONE ASSOCIATION, ACCOMPANIED BY ROBERT HOLLENBECK, VICE PRESIDENT OF GOVERNMENTAL AFFAIRS, AND WILLIAM BETHUNE, LEGAL COUNSEL; AND LEWIS PETTINOS, PRESIDENT, GEORGE PETTINOS, INC., ARDMORE, PA., ON BEHALF OF NATIONAL SAND AND GRAVEL ASSOCIATION/NATIONAL INDUSTRIAL SAND ASSOCIATION, A PANEL

Mr. ROVERUD. Thank you, Senator.

Representing the 400-plus producer members of the National Limestone Institute, I appreciate this opportunity to present our association's views and what I hope will be considered our constructive suggestions for S. 1173.

For the record, my name is Jeff Roverud, and I am president of Pederson Brothers of Harmony and secretary-treasurer of Roverud Construction, Inc., both companies located in Minnesota and operating several limestone quarries in the States of Minnesota and Iowa—family-owned companies, I might add. I am a member of the National Limestone Institute's Executive Committee, but it is in my capacity as NLI Safety Committee Chairman that I appear before you today. With me today is the president of the NLI, Jim Williams, and Randy Rawson, who is our vice president and director of governmental affairs.

The Federal Mine Safety and Health Act of 1977 needs amendment. The past record as compiled by this subcommittee and the full committee and the record that will be further established this morning, supports changes in the act to provide greater administrative flexibility to the mining and quarrying industries under MSHA regulations. In order for this law to ultimately produce the intended results I would submit that employees of MSHA need legislative reform as much as our industry does. I personally believe that district managers and their inspectors are so constrained by the existing law that they are placed in an adversarial position. MSHA should be a helpful tool to promote health and safety within the limestone industry, and the provisions of S. 1173 are a step in that direction.

S. 1173 offers some very substantive and worthwhile amendments to the Mine Act, and NLI supports this legislation. We have suggested in our formal statement, which I believe you have before you, what we hope are a few constructive and strengthening amendments to S. 1173. We hope the subcommittee will give careful consideration to these suggested amendments, and we urge their adoption.

NLI has attempted to work as closely and cooperatively as possible with MSHA since the agency came into being in March 1978. Early on, we realized that we as an association had to be involved at every level of MSHA to minimize the impact of the restrictive and inequitable aspects of the law. We could do that by educating the agency to the particularities and peculiarities of our industry and by urging administrative action more in tune with the needs of our industry. Communication is a two-way street, and we owe much to the willingness of MSHA, through two different administrations, to who listen with an open mind and respond when appropriate in ways consistent with everyone's goal of health and safety.

The manner in which the agency has been governed over these past 5 years has had much to do with its maturing process. Out of our continuing communication with MSHA has come some administrative relief. Our written testimony submitted to this subcommittee in March 1981 details some of this administrative relief.

Senator RANDOLPH. Mr. Chairman.

Senator GRASSLEY. Yes, Senator.

Senator RANDOLPH. I feel embarrassed in a sense to interrupt, and I want this interruption of the statement of the witness to be minimal and unhobbitish. But I am asked by Chairman Stafford to come and make a quorum at our Environment and Public Works Committee, and I feel I must go, if agreeable.

I do promise, and it is a promise that I will keep, and I say to the witnesses who are here, I will read your testimony. I have always done that, and I will do it in connection with the consideration of the pending matter.

Senator GRASSLEY. We know how many conflicts you have—

Senator RANDOLPH. And you have them, too.

Senator GRASSLEY [continuing]. And I am glad that I can be here. My conflicts will come this afternoon.

So, we will certainly excuse you.

Senator RANDOLPH. Thank you.

Senator GRASSLEY. Please proceed, Mr. Roverud.

Mr. ROVERUD. Chairman Nickles' legislation is important, because it allows much of the administrative relief of the past to become part of the permanent law, and it provides a continuing flexibility in law through which future relief can be attained when it has proved to be necessary and appropriate.

The amendments provided through S. 1173 are applicable to the crushed stone industry and present no lessening of worker protection. What is offered are various mechanisms where MSHA can better tailor and target its enforcement programs and educational efforts to where they are most critically needed and most applicable.

Four of the five areas of the law addressed by your legislation are absolutely essential candidates for amendment. These deal with

the number of annual inspections; requirements for civil penalties; training requirements, and onsite industry/MSHA consultation during operating hours. Although in the first and third areas, the relief provided by your legislation could and ought to be extended to underground limestone quarrying as well as to the surface facilities addressed by S. 1173; without amendments to these general areas of the law, any reform legislation, basic or massive, would be incomplete.

S. 1173 is important to the crushed stone industry, if for no other reason than recognizing the veracity of our and MSHA's past efforts to make a very difficult law work. Our industry has come a long way with the act and with the agency. Many of us have worked hard, good faith, and have invested time and energy to make this program work with as much positive benefit as possible and with as little burden to those affected as possible. It has not been easy given the strictness of the law with which we have all had to work. More can be done, but only if additional legal flexibility is provided. To fail to provide now the type of statutory flexibility offered by S. 1173 would be to deny the past record and further progress in the overall goal toward which we all strive—the harmonious provision of a safe and healthy workplace for all employees and employers alike.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Roverud follows:]

TESTIMONY OF THE
NATIONAL LIMESTONE INSTITUTE, INC.
Regarding

S. 1173 -- The Federal Mine Safety and Health Amendments of 1983

PRESENTED BY
Jeffrey C. Roverud
Chairman, NLI Safety Committee

BEFORE THE
SENATE SUBCOMMITTEE ON LABOR
July 26, 1983

Mr. Chairman, we thank you and the Subcommittee for this opportunity to present the National Limestone Institute's views on S. 1173, the Federal Mine Safety and Health Amendments of 1983. This will be the third time representatives of the Institute will have appeared before this committee on this issue since 1976, and the fourth set of testimony we have filed.

For the record, Mr. Chairman, my name is Jeffrey C. Roverud. I am the President of Pederson Brothers of Harmony, Inc. and Secretary-Treasurer of Roverud Construction, Inc., both companies located in Minnesota and operating several limestone quarries in the states of Minnesota and Iowa. I am a member of the National Limestone Institute's Executive Committee, but it is in my capacity as NLI's Safety Committee Chairman that I appear before you today.

The National Limestone Institute is made up of some 466 producers of limestone throughout the country. Limestone accounts for roughly 74% of the crushed stone produced in the United States. There are approximately 2,673 limestone quarries located in 46 states, and in 1981 these quarries produced 646 million tons of stone valued at \$2.2 billion.

Since the Mine Safety and Health Act became effective in March, 1978, NLI's governing policy has been one of working with the agency in every way possible to assure practicality of administration and an educated recognition of the operational differences of our industry -- the crushed stone industry -- as compared with the coal, metal or other nonmetal segments of the overall mining industry.

NLI membership realized early that we had to be involved at every level of the Mine Safety and Health Administration in order to obtain within the statutory framework of the Act the type of flexibility of administration that is necessary to minimize the more restrictive aspects of the law as they apply to us.

We have had -- and continue to have -- meaningful communication with MSHA, and out of it has come some administrative relief.

Our written testimony filed with this Subcommittee in March, 1981, details some of this administrative relief.

MSHA and its leadership, through two Administrations, has taken the time to make field trips, to meet with producers and with various trade associations and to generally work with this segment of industry as best it believes it can within the legal limits within which it operates. We have strived to maintain that atmosphere in which reason and respect can overcome adversarial confrontations.

We believe that an adversary relationship is totally unproductive, and, in the long run, can be counterproductive to the interests of all concerned. It is no secret that our industry opposed this Act in 1977 for well-documented reasons, and we believe that time has proved us right about some of the inapplicabilities and rigidities of the law as passed at that time.

But once the Congress did enact it, we believed it was our responsibility to make it work in every way possible, and to mitigate, through interaction with the agency charged with its administration, its real and potential burdens as we saw them. Where experience demonstrated that a lack of statutory flexibility existed or that specific aspects of the Act were inapplicable to our industry, we felt it was also our responsibility to build that record for presentation to the Congress to support our appeal for amendments to the law. The time is now appropriate to make some basic reforms in the Mine Act.

The 1977 Act merged coal and other types of mining (crushed stone, sand/gravel, clay, etc.) into one statute without the benefit of previous experience. In the beginning, there was great pressure of time to meet administrative deadlines. Mistakes and miscalculations were made by MSHA, resulting in misinterpretations both by MSHA and industry of each party's intent. Out of this early rush, confusion and unfamiliarity grew "horror stories" of the terrible impact this merger of industry segments had on the small, noncoal mine operators throughout the country.

Mr. Chairman, those stories were true then, and they did demonstrate how the initial administration of the Act -- and some of the current requirements of the law -- were and are impacting many of our members and other producers.

Communication was difficult, but slowly, problems of interpretation were resolved when possible, and the substance of the horror stories was dealt with in a positive manner. Communication, as you know, is a two-way street, and we owe much to the willingness of the Assistant Secretaries for Mine Safety and Health -- first, Bob Lagather, and most recently Ford B. Ford -- to listen with an open mind and respond when appropriate in ways consistent with everyone's goal of health and safety. The manner in which the agency has been governed has had much to do with its maturing process -- a much more positive one than its sister agency, OSHA,

-3-

enjoyed in its first five years.

Oversight hearings by this committee, both in May, 1979, and two years ago in March, 1981, have constructed a record which shows that if any further progress in the administration of the Mine Safety and Health Act is to be made -- at least with respect to its applicability to the crushed stone industry -- some changes in the law are required. This need is amply evidenced by what I know has been your study of this issue and the record surrounding several years' debate on this issue. The need has been recognized by your introduction of this important legislation.

Our organization congratulates and supports you, Mr. Chairman, for offering these amendments and for your effort in bringing this matter to the forefront for debate. As you point out in your introductory remarks, there may be other worthwhile amendments to the Mine Act that ought to be offered and considered by this Subcommittee and the Congress. NLI has supported other such amendments -- notably, most of those offered by full Committee Chairman Hatch during the 97th Congress. We continue to support the substance of such amendments.

Four of the five areas of the law addressed by your legislation are, however, absolutely essential candidates for amendment. Without amendments to these areas of the law, any reform legislation, basic or massive, would be incomplete. We specifically refer to the modifications you propose to those section pertaining to:

- number of annual inspections;
- requirements for civil penalties;
- training requirements; and
- onsite industry/MSHA consultation during operating hours.

While other modifications, as may be proposed by other interested parties testifying before this subcommittee, should be considered, we hope that any final reform bill will not become too detailed to jeopardize ultimate floor consideration and passage.

With respect to provisions of S. 1173, we offer the following comments.

SECTION 2. COVERAGE

This section would exempt state- and locally-owned or operated mine sites from federal health and safety regulation.

Our concern with this provision is that currently, where there is no specific local or state law to the contrary, state and local quarries many times compete with privately-owned and operated quarries. This is the case with respect to the production of both crushed stone and agricultural limestone. The degree of competition varies from state to state and from jurisdiction to jurisdiction.

To exempt state- and locally-owned and operated mines -- particularly stone quarries -- from the administrative and engineering expense imposed by and associated with the requirements of the Mine Act would be to accord these publicly-owned facilities an unfair, competitive advantage in the market place. They would not have to meet the same, strict federal health and safety requirements with which privately-owned mines would still have to comply. The mines proposed to be exempted from coverage under the Mine Act would not automatically fall under the jurisdiction of the Occupational Safety and Health Act. It may be that in some states there is health and safety regulation of mines in addition to that imposed by the federal Act. In those instances, assuming that the state regulation was as strict as federal regulation, there would be no diminution of health and safety protection and no financial advantage given to governmentally-owned mines over privately-operated facilities.

At this point, NLI is not in a position to say that inclusion of a provision exempting state- and locally-owned mines from the Mine Act would be grounds to oppose passage of S. 1173. We do raise the issue as a substantial concern, however, and urge the Subcommittee to look further into the competitive consequences of lifting federal health and safety regulation from state- and/or locally-owned and operated mines.

SECTION 3. INSPECTIONS

The 1977 Act would be amended to completely eliminate the current, mandatory annual minimum of two inspections required for surface mining operations. In lieu thereof, MSHA would establish criteria to determine the minimum number of annual inspections each surface operation would receive. In formulating the criteria, consideration would be given to several factors, including the rate of injuries at each mine, the incidence of fatalities at each mine, the nature of each mining operation and the number of miners employed at each mine. We assume and would urge that these criteria would be established through the existing rulemaking process, with involvement from all segments of the mining industry, and that, requirements for annual inspections would differentiate between coal and stone operations.

Under this proposal, all underground mines would continue to be subject to at least four mandatory inspections per year.

As far as it goes, NLI strongly supports Section 3, but we urge even further amendment as it pertains to underground operations.

Eliminating the statutory number of mandatory annual inspections for surface operations is a fine step forward in providing the type of flexibility MSHA needs to effectively target its inspections -- more toward those facilities which demonstrate, by the numbers, that they need more regulatory attention, and away from those which have equally proved the efficacy of their safety programs in maintaining consistently good health and safety records.

There are many surface operations, particularly in the crushed stone industry, that have excellent safety programs and seldom have any real problems. We believe that these operations should be given the credit due to them and allowed to continue with their obviously tried-and-true programs without having to contend with or respond to an arbitrary number of formal inspections.

To give you an example of the excellent safety record of most producers, NLI operates a safety contest each year, making awards to those of our members who have operations which work the most hours, in different man-hour classes, with no lost-time injuries. NLI's 1981 Annual Safety Awards competition provided five separate awards to five different quarries for working an aggregate total of more than one-half million man-hours without a lost-day injury or a death. 188 of our members -- a full 38% -- were honored this year for working at least four years without a serious accident, and in the year 1981 alone, 467 quarries owned by members of NLI -- representing from 13 to over 380,000 man-hours worked -- functioned without a lost-day injury. The judging in this competition is done based on MSHA's own numbers as collected through operator quarterly reporting. We separate out NLI members. We believe the record demonstrated by this competition is quite an achievement, and one we as an industry do not take lightly. It is also a very productive tool for use in building and maintaining pride within an operation to encourage continuation of the attitudes and actions of employees to retain a company's good safety record. Safety feeds, therefore, on safety.

Such contests and competitions demonstrate that what MSHA testifies to is correct. The agency's enforcement resources can be better targeted -- but not without changing the requirements of the law.

Assuming that a criteria-based inspection rate like that proposed in S. 1173 would adequately provide for the safety and health of a surface workforce -- and we see no reason why such criteria could not be devised to work effectively -- it logically follows that the number of annual inspections legally required for underground mines can also be eliminated and be prescribed in the same criteria-based manner as those proposed for surface.

It is illogical to assume that the method for determining the annual inspection rate of one facet of the mining industry is not appropriate or any less safe for another. Setting annual inspection rates by the criteria concept would also allow more responsible flexibility in differentiating between the hazards and conditions of the underground stone industry and the more hazardous conditions under which coal mines operate.

As proposed, each mine would have calculated for it a yearly inspection rate based on its overall safety record, the nature of the mine and the number of employees it has. As proposed, each mine would have its inspection rate set separately and distinctly from every other mine -- inside or outside its own commodity

group. Not only can the variation from one operation to another in the same commodity group be taken into consideration in calculating individual inspection rates, but the even more vast disparities in operation between commodity groups can also be addressed in an individualized manner.

If four inspections per year is too many for most underground stone mines -- and we believe when universally applied that it is -- who is to say that it is not too few for some select others, or too few or too many for underground mines in other commodity groups. We think that no one can say with any degree of reliability that four inspections per year per underground mine is either satisfactory or unsatisfactory, because such a requirement is arbitrary with the law and not based on any real statistical calculations, as would be the case were the law to be changed as your propose.

In this testimony, we will frequently refer to the variances in the way we quarry in the crushed stone industry -- both surface and underground -- and the mining techniques utilized in the coal industry.

S. 1173 makes several important changes in the law regarding coal, metal, and nonmetal surface mining facilities. It may be appropriate at this time to point out to the committee that in the crushed stone industry, there is very little difference between mining techniques used in surface mining and those used in underground stone quarrying.

It has often been complained that the Mine Safety and Health Act of 1977 represents an attempt to regulate the health and safety of the stone industry using the same tools, methods and criteria as those applied in coal mine safety and health regulation.

Certainly as far as perception is concerned, we believe this is true. Few who have not been exposed to the workings of our underground industry have a real understanding of the major differences in operation between coal and stone. All mining is too often stereotyped into one operational mode -- and then romanticized and criticized.

In few areas is this misunderstanding more apparent and more costly when it comes to regulation than when comparing underground coal mining and underground limestone quarrying. I would like to highlight a few of what we consider to be the more simply, but major, differences between the two. Perception of these differences has a bearing on the extent of inspection, training, and other type of regulation that may or may not be perceived to be necessary for our industry when compared to others.

I think we all realize the major hazards of coal. Major hazards of underground coal revolve around the threats and impacts of fire, gas, explosions and entrapment (all of which can cause death or injury to miners), and an environment where unstable

ceilings are a common rule. Electrical conditions exist in some coal mines where a lot of electrical equipment used is not common in our industry. Ventilation is a very significant concern for coal operations -- not so with underground limestone operations inasmuch as ventilation is provided naturally as a result of the mining technique employed.

Because of the small volume of coal obtained per square foot of surface mined, a great deal of area is often required to be mined out for coal. This necessitates going sometimes miles from the shaft back into the working areas of the mine and moving the material out. These are very confined quarters that are supported in most cases by timbering or some other structural device not occurring naturally in the mine. Support of the roof is required because usually the roof itself has little structural integrity and must be supported fairly close to center.

In going into an underground limestone quarry, you find a situation where you have a very thick deposit of a structurally-sound material -- limestone rock. Look out any Capitol window and you will see that most of the public buildings and monuments in Washington -- including the Capitol Building -- are built with limestone. It has great structural integrity. In quarrying limestone underground, a very substantial roof of limestone is left so that it does not require additional support. Occasionally, roof bolting is used just to reassure the integrity of an occasional anomaly in a roof, but in general there is no external or unnatural support required.

Stone is extracted underground from large, solid deposits of sufficiently inherent strength to permit the creation of large rooms with high ceilings, in a grid pattern -- this is called the room-and-pillar quarrying method. Large pillars of naturally-occurring stone are left to support the roof and, again, no timbering or other support is generally necessary. The material being extracted is noncombustible -- as such it is used often in underground coal mining to retard combustible coal dust and methane gases generated during coal production.

High ceilings in underground limestone quarries permit the use in some mines of heavy equipment, much like that used in surface crushed stone operations, to load and haul material from the working face of an underground stone mine. Many faces may be worked concurrently, but rarely are there more than two or three men in any room at any time.

The access to these mines is usually from or very near ground level. There are usually many openings provided so that natural ventilation is not a problem. The situation is completely different from what is found in the common underground coal mine.

When accidents do occur within an underground limestone mine, local ambulance service with trained paramedics is capable of driving right to the scene of the accident, in most cases, and picking up and transporting the injured within a short time.

Fire in limestone mines is almost unheard of. Fire potential is limited to combustible materials and fuel in mobile equipment, such as loaders and haul trucks. Such equipment on fire in a large room, connected with other large rooms, can be controlled by conventional, surface means -- by local fire departments which can be called in to extinguish the blaze since access by such emergency vehicles from the surface is readily available. Large volumes of air available naturally for complete combustion, high ceilings and large openings into the mine prevent dangerous levels of carbon monoxide.

Room-and-pillar mines with large rooms, high ceilings and inter-connecting rooms present no danger of entrapment. Accidents requiring emergency or rescue assistance in underground limestone mines call for the same type of response as would occur at a surface mining operation. These locally-available emergency units can be driven into these underground facilities just as they would to provide assistance at a surface mine, and the incidents encountered would be little different. MSHA regulations require an operation to develop, in addition, emergency procedures and evacuation plans which are applicable to these conditions. Recognizing the difference in operation between underground stone quarrying and other types of underground mining, MSHA allows certain exemptions to its mine rescue rules for the underground limestone industry.

Our point is that if fairness is to be observed, the operational characteristics of underground limestone mines require that they be approached in a regulatory sense differently than coal.

There is an operational characteristic of surface crushed stone which has been burdened by current legal requirements for a minimum number of annual inspections.

The limestone industry has numerous operations in the Midwest that are portable in nature -- that is they move plant production equipment from one surface pit site to another to service areas surrounding each site. Under current law, these portable operations are subject to at least two inspection per pit site per year. My companies operate portables which move from site to site frequently during the year. Under current legal requirements, it is possible to incur scores of inspections -- one after every move -- and to have enforcement presence on a mine site virtually continuously during the operating (seasonal) year. This, even though the plant equipment being moved is the same and the personnel utilized are the same.

We raise this as a concern. It may be that, upon reflection, provision for consideration of the "nature of the mining operation" and "number...employed" as is already provided for in S. 1173 may satisfy the concerns of portable operators. We do want to raise the issue for the record, however, and for continued consideration as this legislation moves forward.

SECTION 4. NOTICES OF VIOLATIONS, CITATIONS, AND ORDERS

S. 1173 would remove mandatory penalties for all violations other than those found to be significant and substantial (as also defined by S. 1173).

There is no more troubling section of current law than that which pertains to mandatory citations and penalties. The current system prejudices guilt. It is purely punitive. It does not provide incentives or encourage compliance with existing standards, because the volume of current regulations and standards with which an operator must be in compliance at all times, and the natural subjectivity brought to any inspection by any inspector, makes complete and continual compliance impossible -- hence, always the presence or threat of a fine -- less of a threat in that imposition of a fine in all instances is required by law.

Even though an inspector is not expected to, and reasonably could not, completely "sanitize" an operation of violations of the law during one inspection, it is expected, nonetheless, that at the time of the next inspection, an operator will have no violations of law or regulation on his property, regardless of how significant. It has been referred to as the traditional, carrot-and-stick approach to enforcement. It is such only in the sense that after the carrot is offered, the operator is hit every time with a stick, regardless of his good faith efforts.

The current penalty system as required by law penalizes the operator who is trying to comply in good faith. In doing so, it is creating a negative atmosphere which is counterproductive to the goals this Congress and operators and labor all have. Attention has been diverted from positive accident prevention to a desire on the part of the operator to, rightfully, defend himself against hopeless odds -- to comply and not necessarily initiate.

In the past, MSHA's role has often been characterized as that of a policeman. Under current law, however, MSHA does not have even the type of flexibility accorded to the ordinary cop on the beat.

A law enforcement officer usually has the flexibility to use his discretion in issuing an actual summons or ticket for a transgression of law. In many instances -- even some very serious, where a third party does not file a complaint -- the officer can simply counsel and release.

The MSHA inspector does not have this flexibility or discretionary authority. He must issue a citation if he only "believes" a violation to exist, and that citation must have levied on it a civil penalty -- even if it is only the \$20 flat fee for nonserious violations initiated through MSHA's recent administrative reforms of the penalty regulations. There is no latitude given to the inspector to deviate from this citation/penalty process, even when the inspector believes it would be more beneficial to his overall goal.

-10-

We congratulate MSHA for the regulatory reform and internal reorganization it recently brought about in this area. It has afforded a degree of additional flexibility and relief. It is, however, another demonstration of the agency's ability to provide only partial relief because of the rigidity of the law.

Mr. Chairman, even your proposal -- while extending significant legal reform -- does not go far enough. While we all agree that abatement is the issue and key, a mandatory citation for a significant and substantial violation could conceivably still be excessive. For instance, an operator and an inspector find during a walk-around a nonserious violation in the working area. It is immediately abated and there is only a notice of violation issued under the terms of S. 1173. This is fair and equitable, although we would question even the necessity of giving the notice once the violation was abated. No penalty is assessed, because there is no willfulness attached to the violation and because it was promptly and properly abated.

But what of the violation that is judged by all parties to be serious, but exists because of circumstances completely beyond the control of an operator? Once it is found, every resource at the operator's command is employed to abate this serious violation, and it is abated in more than a timely manner. It will require, nonetheless, a citation and a penalty, even though there was absolutely no willfulness involved or any thought on the part of the operator to avoid the law or to intentionally create an unsafe condition. And, even though the operator's record shows a long history of good faith compliance with the law and regulations and a good safety record at his plant.

One particular circumstance often beyond the immediate control of an operator is the performance of his employees. Most workplace injuries involve behavioral or organizational components, not just equipment defects of the type most likely to be covered by present standards or to be found by inspectors. Injury prevention must be the shared responsibility and pursuit of management and workers, as well as government. But often, regardless of extensive, company-provided and -reenforced training programs, company policies, on-the-job monitoring of employees, and simply a "best effort" approach, a violation of MSHA safety standards is committed by or a personal injury may be the responsibility of an employee, however unintentional.

Present law does not provide authority to warn or cite an employee, let alone fine him (for other than smoking-related violations). But even in such an instance, an operator is considered to be fully responsible, and is subject to the full force of law.

We believe an inspector needs more flexibility. While S. 1173 provides a high degree of flexibility that is important and would be helpful, we would go further and propose making it discretionary with the inspector as to whether either a notice of violation or citation is issued. This could be accomplished by changing

-11-

the "shall" to "may" in Section 4 of S. 1173.

In lieu of inspector discretion, and as an option to making the issuance of a notice of violation or citation discretionary with the inspector, we would propose that, if a citation remains mandatory for a serious violation, discretionary authority be provided to MSHA to allow a penalty for such a citation to be suspended where there are extenuating circumstances, where it can be demonstrated that an operator's accident/injury/fatality rate is below the national average and when the violation has been promptly and properly abated.

Some will suffer a negative reaction to our recommendations for more discretion with respect to the issuance of citations or the levying of penalties. It will be pointed out that such discretion has been abused in the past and that alleged "buddy-buddy" relationships between mine operators and inspectors have led to unsafe conditions.

The fear of abuse should not be cause to impose unreasonable or punitive requirements on those regulated. If there is abuse, such circumvention and violation of federal law by federal employees and mine operators should be dealt with swiftly and severely through existing legal and personnel provisions of law.

We further urge the Subcommittee to provide that a notice of violation not be included in an operator's history of previous violations. Again, the volume of regulation with which an operator is expected to be in full compliance at all times makes the total avoidance of nonserious violations impossible. We do not believe, therefore, that penalties for separate, serious violations should be determined by the number of nonserious violations of the past.

We also strongly urge that the Congress direct that an inspector "find" a violation of the law prior to the issuance of either a notice of violation or citation. At present it is required only that an inspector "believes" that such a violation exists. While it is true that there is a fine semantical line between the two words, the change is an important one if citations and/or penalties are not made discretionary.

SECTION 5. TRAINING

The proposed changes in the training aspects of the law advanced by S. 1173 are very good, and NLI supports them. We applaud the statutory shift from a "generic" approach to training plans and programs to an approach where an operator can specifically tailor and continue to modify his training plan to fit the needs of his employees and his operation. The "at least as effective" clause is all important in providing optimum flexibility to both surface and underground operators.

For the underground limestone industry, however, retention in the law of 40 hours of mandated training for new miners having no

-12-

underground experience is unnecessary -- very much for the same reasons differentiation between surface and underground operations was unnecessary with respect to numbers of annual inspections.

We see no need for a statute-specific, arbitrary number when dealing with underground mines -- most particularly with underground limestone quarries. Regulations spelling out what training is "necessary and appropriate", as provided for surface operations under S. 1173, can provide the same optimum level of training desired for underground employees -- however different in scope it may be.

As proposed, each mine would have its training plan approved separately and distinctly from every other mine -- inside or outside the same commodity group. Not only can the variations from one operation to another in the same commodity group be accommodated this way, but the even more vast differences between commodity groups covered by the Act can also be addressed separately and distinctly.

The statutory provision for closely supervised on-the-job training is a particularly positive step. MSHA has allowed incorporation of such on-the-job training into training plans, but to have it in the law is an important and welcome proposal.

SECTION 6. INDUSTRY CONSULTATION AND ASSISTANCE

The manner in which MSHA's Compliance Assistance Visits Program operates has been very helpful to our members, and the expanded codification of this program -- to include visits to and consultation at mine sites while the mine is in operation -- has our complete support

During actual operation, MSHA consultative personnel will be better able to get a total impression of the dynamics of an active mine operation, and will provide an opportunity for both the operator and MSHA to address problems that arise only during times of actual operation. It will also encourage a continuing dialogue between what should be a government health and safety specialist and the operator. This is particularly important for those smaller quarries which do not have full-time safety directors.

Two points of concern, however.

As it presently reads, S. 1173 would authorize that "such consultation and assistance may be conducted at the initiative of the Secretary or upon the request of the operator." (emphasis added) This implies that a representative of the Secretary could enter mine property without the permission of the operator for purposes of consultation and assistance.

We would prefer to maintain this program on a voluntary basis with the operator. We do not believe that an involuntary program,

-13-

as implied by Section 6, would be beneficial either to the relationships between MSHA personnel and some mine operators or to the overall health and safety of workers. It might even be detrimental to nurturing an ongoing CAV program of any type.

It is difficult at present to encourage some operators to apply for CAV's because they do not trust MSHA under any circumstances -- a continuing outgrowth of past adversarial relationships. The current consultation and assistance program -- and any future program -- will exist and function only on mutual trust between the parties. To allow MSHA to initiate a consultative visit would be counterproductive, regardless of the fact that enforcement personnel would not be used.

Further, while to a degree we understand why advice given in the course of consultation cannot be binding on the Secretary, when such a general caveat is employed in statutory language, it leaves a negative connotation. What it says is that the advice given by MSHA, although accepted in good faith by an operator as appropriate and proper action or advice to follow, is not guaranteed by MSHA to be correct, and may become inoperative in the future or be superceded at the whim of follow-up enforcement personnel.

Because consultation and assistance often relates to actions which result in substantial capital expenditures and significant plant down-time, this statutory caveat tends to discourage operator use of the program.

If negative phrasing such as this must be retained in the proposed language of S. 1173, we strongly urge that additional wording be included allowing an operator to at least use consultative advice, and the written recommendations by MSHA personnel emanating therefrom, as an affirmative defense and as a show of good faith during any subsequent MSHA proceeding arising out of such advice.

SUMMATION

NLI supports S. 1173, and urges the Subcommittee to consider amendments thereto to strengthen the legislation by accomplishing the following:

- Eliminate the legal requirement for four annual underground inspections, and extend to underground mines authority to use the criteria-based system of inspection-rate setting proposed for surface facilities;
- Provide discretionary authority for an inspector to issue or not issue either a notice of violation or a citation;
- If a mandatory citation is required, provide discretionary authority to MSHA to

-14-

suspend imposition of a penalty on a citation, when there is a low injury rate at the mine operation cited;

- Assure that a notice of violation will not be counted as part of an operator's history of previous violations;
- Require an inspector to "find" a violation rather than simply "believe" it to exist;
- Extend to the underground segment of industry the same flexibility as that accorded to surface operations in the establishment and application of training plans and programs;
- Eliminate authority granted by S. 1173 for MSHA to initiate consultation and assistance when not requested by an operator (or, provide for specific operator concurrence before such assistance is initiated); and
- Provide that consultative advice and assistance may be used as an affirmative defense by an operator in MSHA proceedings relating to that advice.

We urge expeditious action to enact the changes proposed by S. 1173, modifying inspection, citation/penalty, training and consultation and assistance aspects of the Mine Safety and Health Act.

The amendments of S. 1173 are applicable to the crushed stone industry and present no diminution of worker protection -- simply additional statutory flexibility to tailor and target enforcement programs and educational efforts to where they are most critically needed and most applicable.

Furthermore, if these amendments are enacted, we will know what to expect in their administration. There will be no unfamiliarity with the agency charged with their administration as there was in 1978. If there are problems, we will have the mechanisms through which to work to resolve difficulties as we have in the past.

We recognize that the amendments proposed by S. 1173 might not find favor when applied to commodity groups other than the crushed stone, sand/gravel, clay and other related, light-mining industries. The amendments may impact these other mining segments covered by the Act differently than we perceive they will impact on us.

These amendments are critical to our industry, nonetheless.

Therefore, we strongly urge the Subcommittee to find a way to

legislatively effect the changes proposed in S. 1173, and others as may be deemed appropriate, if for no other segments of the mining industries covered by MSHA than the crushed stone, sand/gravel, clay and related segments. It is these parts of the overall mining industry that the record shows would gain from the additional flexibility afforded by S. 1173. We would encourage action by the Congress on this legislation, even if it means the establishment of targeted legislative relief in these areas of law for these industries alone. In that regard, we would endorse the creation of a separate title in the Act of 1977, pertaining only to the crushed stone, sand/gravel, and related industries.

We have come a long way with the Act and the agency. Many of us have worked hard, in good faith, and have staked our personal reputations to make this program work with as much positive benefit as possible and as little burden to those affected as possible.

More effort can be made, but only if additional legal flexibility is provided under which the agency can act.

Our industry does not ask for any special favors. The administrative flexibility in the application of the law over the last five years -- and the flexibility that was not forthcoming from MSHA -- was provided based on merit and appropriateness -- and I hope equity. To fail to provide now the type of statutory flexibility offered by S. 1173 would be to deny further progress in the overall goal toward which we all strive -- the harmonious provision of a safe and healthy workplace for employees and employers alike.

Senator GRASSLEY. Thank you for your testimony.

Senator Denton has now arrived.

Senator, we held up the introduction of Mr. Christie so that you could introduce him, and if you want to at this point, please go ahead.

Senator DENTON. Thank you very much, Mr. Chairman.

I am pleased to have the opportunity to introduce Mr. Jim Christie from Birmingham, Ala., who will testify on behalf of the National Crushed Stone Association.

Mr. Christie is the manager of the Corporate Safety Administration of Vulcan Materials Co. in Birmingham. A safety engineer, who has been involved in every aspect of industrial safety during a career that spans 30 years, he is currently responsible for the health and safety of the employees of the largest producer of crushed stone in the Nation. In addition, he is a member of the Executive Committee of the National Safety Council's Cement, Quarry and Mineral Aggregates Section; a professional member of the American Society of Safety Engineers; a member of the National Crushed Stone Association's Safety and Health Committee; a certified safety professional, and a member of the Advisory Board of the Alabama Safety Council. Mr. Christie is a longtime resident of Alabama, and I am proud that he will deliver his expert testimony before a subcommittee of which I am a member. I understand that his written comments on S. 1173 are generally favorable, Mr. Chairman.

In my opinion, S. 1173 is a badly needed piece of legislation that I hope will foster a spirit of cooperation among industry, labor and Government. I support the bill and the chairman's efforts to diminish the effects of onerous regulation on industry. I look forward to the testimony of all the witnesses today and particularly that of Mr. Christie.

Thank you very much, Mr. Chairman.

Senator GRASSLEY. Mr. Christie, will you proceed, please.

Mr. CHRISTIE. Thank you, Mr. Chairman.

I would take the opportunity to introduce my associates, Mr. Robert Hollenbach, to my immediate left, who is vice president of governmental affairs for the National Crushed Stone Association, and Mr. William Bethune, our legal counsel.

Mr. Chairman, our full statement details our constructive comments on S. 1173. We consider S. 1173 to be a good start, but it does not go far enough. We urge the subcommittee to change or expand the provisions of S. 1173 as follows: Do not exclude as operators State or political subdivisions thereof. Their workers face the same hazards as workers of privately owned operations. Before such a step is taken, their injury and fatality rates should be carefully examined. Also, this exclusion would grant public operations significant economic advantage and result in additional economic hardship for our industry when it is already pressed by the recent economic downturn.

Second, eliminating a fixed number of annual inspections for surface operations and setting inspection frequency by safety performance is excellent, but these should also be applied to underground stone.

Third, establishing penalty-free notices of violations still allows inspectors to act on the belief that a violation has occurred. They should be required to find violations. Further, operators should be allowed to appeal before resources are used to abate a notice or citation which may prove to have been wrong. We also urge review of penalties in the 1977 act. These are greatly out of balance and excessively punitive.

Fourth, the requirement that training plans be approved by the Secretary is objectionable. How can the Secretary know that the plan filed is " * * * necessary and appropriate to the particular tasks performed * * * and the conditions existing at the particular mine"? The Secretary should be authorized to require changes or additions only after it is shown that a need exists.

S. 1173 also proposes training changes only for surface operations. This should be extended to underground stone operations as well.

Fifth, S. 1173 would authorize the Secretary to provide consultation and assistance upon his own initiative. There are already many opportunities for the Secretary to monitor an operator's accident prevention program. Consultation and assistance visits should result only from the operator's initiative to improve worker safety and health.

Another objection is to the statement in S. 1173, "Advice given in the course of consultation and assistance at any mine * * * shall not be binding on the Secretary in the event of any subsequent action with respect to such mine."

There is no incentive to heed MSHA's advice if the Secretary may ignore it. If the Secretary is not bound by recommendations acted upon, consultation and assistance is valueless.

Other provisions not addressed in S. 1173 should be included as amendments to the 1977 act.

By providing that the Secretary can promulgate standards with regard to sections 556 and 557 of the Administrative Procedure Act, the Mine Safety Act allows rulemaking by notice and comment. Interested parties have no opportunity for presentation of evidence and cross-examination of witnesses.

Under the Metal and Nonmetal Act, proposed standards which were impractical, ineffective, or unjustified could be discredited. How, without the full protections of the Administrative Procedure Act, no party can effectively test the theory of a determined proponent.

Then, courts uphold final rules unless they are arbitrary, capricious, or an abuse of discretion, a standard extremely difficult to satisfy.

Added to this, the act requires that advisory committees be dominated by a majority of public members whose knowledge of mining is limited at best. Two advisory committees have been utilized by MSHA, and the regulations they produce caused consternation and confusion.

Despite the weaknesses in the rulemaking procedure, we are now faced with a massive program of standards revision by MSHA. Their preproposals are hitting industry and labor alike like an avalanche, seriously taxing our ability to participate. MSHA's rule-making schedule calls for 29 major regulatory actions by October 1984.

NCSA believes also that S. 1173 should authorize State enforcement of the Federal mine safety and health programs. Before the 1977 act, seven States had approved plans and maintained superior safety records. Under the 1977 act, some States continue to inspect our quarries. This doubles the inspection load, wasting resources of government and industry.

Mr. Chairman, many of the provisions in S. 1173 and the changes we recommend today, may not be acceptable to all parties. This points up the basic problem our industry has with the 1977 act. It is a patched-up version of an earlier coal act. Indeed, several titles in the 1977 act pertain only to coal. Just as those titles are not appropriate to stone, we do not suggest the relief needed for stone is appropriate to coal or other commodities.

A separate title could tailor this law to our industry and would make the act more effective and less burdensome. It would have to stand alone, address the conditions relative to stone, and not be simply a repeat of provisions for other mining industries. Quarries do not present the same hazards found in other mines. The best interest of our workers is not served by a law which evolved in response to a long series of catastrophic events in other types of mining.

Until legislation provides recognition of the distinct character of our operations, NCSA will continue to seek relief from the 1977 act.

Thank you, Mr. Chairman, for the opportunity to express our views this morning.

[The prepared statement of Mr. Christie follows:]

TESTIMONY
OF THE
NATIONAL CRUSHED STONE ASSOCIATION

BEFORE THE
SENATE SUBCOMMITTEE ON LABOR
JULY 26, 1983
ON HEARINGS ON S. 1173

BY
JAMES M. CHRISTIE
MANAGER, CORPORATE SAFETY ADMINISTRATION
VULCAN MATERIALS CO.

Mr. Chairman and members of the Subcommittee on Labor:

The National Crushed Stone Association appreciates this opportunity to present testimony on S. 1173.

I am James M. Christie, Manager, Corporate Safety Administration of the Vulcan Materials Company, in Birmingham, Alabama. For the past 30 years, I have been active in the field of industrial accident prevention. In that time, I have served as a safety engineer for DuPont, as the National Safety Council's industrial staff representative to their Cement, Quarry and Mineral Aggregates Section, as senior safety engineer for the Portland Cement Association, as safety director for the Florida operations of International Minerals and Chemical Company, and as Chairman of the National Crushed Stone Association's Safety and Health Committee. Presently, I am a member of the Executive Committee of the National Safety Council's Cement, Quarry and Mineral Aggregates Section, a professional member of the American Society of Safety Engineers, a member of NCSA's Safety and Health Committee, a certified safety professional and a member of the Advisory Board of the Alabama Safety Council.

With me at the witness table this morning, to assist me and the subcommittee as necessary with any questions are:

Mr. William J. Bethune, an attorney with the firm of Bierbower & Bierbower, NCSA's General Counsel, and

Mr. Robert C. Hollenbach, Vice President, Governmental Affairs, National Crushed Stone Association.

The National Crushed Stone Association, for whom I am presenting testimony this morning, represents a broad cross-section of the crushed stone industry and its related manufacturer and service industries. NCSA's producer member companies account for approximately 70% of the crushed stone used annually as construction aggregate in the United States. Our members operate quarries in 37 states. These quarries produce traprock, dolomite, limestone, granite and other miscellaneous types of rock.

Since NCSA was first established as a national association in 1918, one of the principal reasons for its existence has been to assist our member companies in improving the health and safety conditions of their operations.

In matters relating to health and safety, as in all other matters affecting the industry, NCSA's positions and actions are based on direct input from our various committees and the actual experiences and expertise of our member companies.

Over the past 65 years, NCSA has conducted an uninterrupted effort to build strong health and safety programs and to provide health and safety information and incentives for those working in the crushed stone industry.

In the mid-1960's, NCSA played an active role in assisting the Congress to better understand the many differences between types of mining for various mineral commodities and in aiding the Congress in its consideration of federal mine safety legislation which became the Federal Metal and Nonmetallic Mine Safety Act of 1966.

When that Act was repealed and replaced by the Federal Mine Safety and Health Act of 1977, NCSA immediately determined to provide its sincere best efforts to assist the Mine Safety and Health Administration (MSHA) and the crushed stone industry in making the Act work. NCSA saw that it had a responsibility to establish close liaison with MSHA, to advise MSHA officials of the special characteristics of stone quarrying, and to inform crushed stone producers of the provisions of the Act and of the importance of complete compliance.

On January 4, 1978, soon after his swearing in as the first Assistant Secretary of Labor for Mine Safety and Health, Bob Lagather, at the suggestion of NCSA's president, met with key members of NCSA staff, the Chairman of NCSA's Safety and Health Committee and several other key industry members of that committee.

In the following months, many staff days and Safety and Health Committee days were utilized in planning, with MSHA officials and internally within NCSA, to make the 1977 Act understandable to our industry, and in meetings with MSHA officials in the field and at MSHA headquarters in Arlington, Virginia.

A major workshop on the new Mine Safety Act of 1977 was presented to our members at NCSA's national convention in Las Vegas, Nevada, in mid-January of 1978.

Twelve full working days in March and April of 1978, not including preparation and travel, were expended by NCSA staff in attending meetings in Washington, D.C. and Tucson, Arizona, to assist the MSHA Advisory Committee on Advisory Standards. One member of this advisory committee had been nominated by NCSA. Our staff contributed testimony, suggested appropriate language and posed questions throughout these meetings.

Members of NCSA's Safety and Health Committee spoke at state and local aggregate association meetings to explain the Act to our producers. Three members of this committee presented the first one-day workshop on the Act for the Cement, Quarry and Mineral Aggregates Section of the National Safety Council.

Fourteen full days in April and May of 1978 were expended by NCSA staff in attending meetings in Washington of the MSHA Advisory Committee on Training. NCSA staff contributed recommendations pertinent to the crushed stone industry and offered many suggested provisions and changes which were not incorporated in the final training rule.

The June, 1978, issue of Pit & Quarry magazine carried a major article describing the new Act and its provisions and telling stone producers what they needed to do to comply. This article was prepared by a senior member of staff with the assistance of the Safety and Health Committee.

The July, 1978, issue of Rock Products magazine carried another article written by NCSA staff with the assistance of the Safety and Health Committee. This article, "Getting The Mine Safety Act Together," listed and explained the Do's and Don't's for coping with the complex new law.

On July 26, August 1-11 and August 24, 1978, two NCSA staff members plus a staff member of the National Sand and Gravel Association presented day-long seminars in ten cities on the major aspects of the 1977 Act. Over 600 aggregate producers attended. The cities were Baltimore, Albany, Chicago, Kansas City, Denver, Minneapolis, Portland (Oregon), Los Angeles, Dallas-Ft. Worth and Atlanta. This herculean effort took weeks of planning to assure that aggregate producers understood the new law and how to obey it.

NCSA staff met with top level MSHA officials to discuss problems on at least six occasions between April and September of 1978. Assistant Secretary Lagather was involved in at least three of the meetings.

Other meetings to discuss special problems or future MSHA activities were held between various MSHA and NCSA staff members on March 28, May 17, June 1, June 20, July 6, August 16 and October 10 of 1978. There have been many other informal visits and hundreds of telephone calls with both MSHA headquarters and field offices.

NCSA staff was requested to speak before various groups during 1978 on the implementation and ramifications of the Act, including:

Presentations at three Energy Bureau educational seminars.

The Pennsylvania Aggregates Association sponsored a panel with MSHA personnel and NCSA staff representatives to answer questions from quarry operators.

The Pennsylvania Governor's Safety Conference on a panel with MSHA personnel and NCSA staff members.

Before a group of mine operators and educators in Colorado who were seeking to set up a state-wide training program.

Before the Maine Associated General Contractors.

Before the Alabama Surface Mining Association.

Before the Virginia Safety Council.

Before numerous state aggregates associations at their annual meetings.

At NCSA member company management meetings.

Finally, NCSA presented extensive and detailed comments on proposed or draft regulations on eleven occasions during the first year of the Act and participated at public hearings in Charleston, West Virginia, on the proposed training regulations. In each instance, specific recommendations or alternatives offered by NCSA were rejected by MSHA. MSHA's consideration of industry comment and industry testimony from these efforts was nil.

After all efforts to work with the agency had proven fruitless, NCSA joined the National Industrial Sand Association, the National Sand and Gravel Association and other associations, and over 1100 aggregate producers to seek relief by filing a court challenge to MSHA's final training rules. The Third Circuit Court of Appeals found that, despite serious implications for our industry, the regulations were not beyond the broad scope of the Act. The Court clearly implied that the appropriate place to seek regulatory relief was the Congress.

Since 1978, we have been to Congress many times, appearing before the appropriate committees and subcommittees of both houses.

The agency has begun to modify its position on several issues in the direction of what industry has been suggesting. These changes were parceled out through dozens of MSHA policy memos, interpretative bulletins and clarifications, rather than by actual modification of rules and standards.

Mr. Chairman, NCSA has always attempted to work for improved health and safety conditions in the industry. We have tried to work with MSHA, but we have been astonished when honest evaluations and reasoned recommendations have gone unheeded.

NCSA shares the concerns of your subcommittee in trying to protect those who work in quarrying and related industries. We have the responsibility to work for equitable and sound operating and management goals and objectives, recognizing the obligations of our industry. As I have recited, this is what we have done. We have worked with MSHA, informed and advised our industry, initiated legal action. We have turned to the courts and to Congress to appeal for relief from impractical and burdensome requirements which do not fit the operations and the working conditions in our industry

After the first year of fruitless effort to make the Act work, a group of representatives of various aggregate industry associations met to decide what legislative goals could be achieved.

Three possible courses of action were discussed which, if successful, would provide relief for our industries.

1. Seek substantive amendment to almost every section of title I of the 1977 Act.
2. Seek amendment which would establish a separate title concerning only sand, gravel and stone.
3. Seek transfer to the jurisdiction of the Occupational Safety and Health Administration.

Of the three possibilities, only the third - transfer to OSHA - appeared to be an achievable legislative goal. It had other important appeals, also. Since the majority of our industry's product is used in construction, crushed stone operations are located near construction sites and working conditions at both are similar. OSHA has jurisdiction over the construction industry. Further, while crushed stone is a mineral commodity, its extraction and processing are quite different in many respects from extraction and milling of most metallic and other minerals. Indeed, even the technical terminology used in the crushed stone industry is different from that used in other mining. As a result of this latter factor, many of the MSHA health and safety standards have no application to our operations.

Relief from the coal-oriented provisions of the Federal Mine Safety and Health Act of 1977 remains an important policy goal of NCSA, just as it was in the 97th Congress when NCSA presented testimony to this subcommittee on March 12, 1981 on S. 351. That bill was favorably reported by this subcommittee soon thereafter. S. 351 would have transferred our industry to OSHA jurisdiction, thereby putting us under the same regulatory conditions as comparable construction activities. Unfortunately, S. 351 did not proceed further. This still remains a viable alternative.

To be sure, certain administrative actions recently undertaken by MSHA have brought MSHA in the direction of the relief sought by our members. Also, the Congress has provided temporary relief through appropriations bills which placed spending restrictions on MSHA.

It was alleged by some that these limitations on MSHA enforcement of safety training provisions of the '77 Act on surface stone, sand and gravel, and the seven month total prohibition on MSHA enforcement last fiscal year, would result in greater hazard to our workers. Events have proven this not to be true.

The safety record of the crushed stone industry has improved steadily through this period and continues to do so.

The perverse irony is that, during the first year in which the Federal Mine Safety and Health Act of 1977 was being enforced on crushed stone operations, the attention and available efforts of management and safety personnel in the crushed stone industry were so diverted that a four year steady downward trend of injuries was totally reversed. This diversion was caused by make-work compliance efforts mandated by the Act and the multitude of ill-fitting regulations issued.

Today, however, we are here to make constructive comment on S. 1173, which you, Mr. Chairman, introduced on April 28, 1983. Your remarks on the Senate floor that day included expressions of praise for Assistant Secretary Ford B. Ford and I would like to go on record for NCSA by stating that we, too, admire Mr. Ford and appreciate his achievements as the leader of MSHA.

We note, too, that in those same remarks you acknowledged that S. 1173 is intended to make "some basic reforms," but that there are other changes you would support.

I will discuss each of the provisions contained in S. 1173 and urge the subcommittee's acceptance of certain other considerations.

(1) Section 2(a) of S. 1173 would change the definition of "operator" and coverage of mines subject to the '77 Act by exempting "any state or political subdivision thereof." NCSA objects to this exclusion. Our reasons for this objection are:

(a) The same hazards that face workers in privately owned aggregate operations are also present in stone quarries and sand and gravel pits operated by states and local governmental bodies. Whereas NCSA's efforts to obtain relief from MSHA enforcement, would still afford our workers the protections of the Occupational Safety and Health Act, the proposed exemption in S. 1173 would leave workers in state operations uncovered by any federal safety and health law. Before such a step is taken by the Congress, the injury and fatality rates of these operations should be carefully examined. MSHA's statistical facilities can provide such information.

All three proposals our industry contemplated to obtain relief from the 1977 Act -- amendment of all of title I of the Act; establishment of a separate title in the Act for sand, gravel and stone; and transfer to OSHA -- would have kept our workers under the protective umbrella of federal safety and health enforcement. Unlike our three options, S. 1173 would leave some workers unprotected.

(b) The crushed stone produced by our members goes largely to construction projects of the federal, state and local government. States, or local governments operating quarries, would have a competitive advantage over privately owned quarries if the former were exempt from federal safety and health requirements.

The exemption would create an additional economic hardship and marketing disadvantage for our industry at a time when it is already hard pressed from the recent recession. It would tend also to vastly increase the number of workers whose work conditions were not covered under one or another of the federal laws because state and local governments would be encouraged to expand their operation of aggregate sites due to their economic advantage.

(2) Section 3 of S. 1173 would remove the statutory requirement of the 1977 Act for two annual mine inspections for surface mines if the mine meets certain criteria to be established by the Secretary. S. 1173 also provides specific guidance to the Secretary for establishing those criteria.

NCSA generally applauds this provision. It grants relief to operators who have earned it through good safety performance and it provides incentives to other operators to work harder on safety training and to eliminate unsafe conditions and practices.

Equally important is the practical flexibility it allows MSHA to marshal its personnel and resources at the place or situation where they are most needed.

NCSA has one reservation, namely, the provision covers only surface operations. It should also cover underground mining operations. Underground crushed stone operations maintain a better safety record and have lower injury and fatality rates than do most surface mining categories. Most hazards normally associated with deep underground mines do not exist in underground crushed stone operations.

(3) Section 4 of S. 1173 authorizes the issuance of a penalty free notice of violation except where the violation of a standard is found to be significant and substantial. If the notice of violation is abated in a timely manner, no civil penalty is assessed. This section also adds to the Act a definition of significant and substantial.

NCSA welcomes this change as far as it goes. We urge that the subcommittee carry this change even further with the following additional provisions:

- (a) Require that the notice of violation, citation or order be based on a "finding" of a violation rather than the "belief" that a violation has occurred.
- (b) Change section 105 to allow an operator to file a petition with the Federal Mine Safety and Health Review Commission for temporary relief from a notice of violation or citation before abatement is required. This change is necessary to allow an operator the opportunity to plead his case that the inspector erred in issuing the notice of violation or citation before scarce resources are used to abate the challenged violation.

While section 4 of S. 1173 provides some relief from the assessment of penalties by providing for penalty free notices of violation, the bill does not address the level of penalties called for in the 1977 Act. Nowhere in S. 1173 is section 110 of the 1977 Act addressed directly. The penalties called for in section 110 of the Act are completely out of balance with those called for in section 17 of the Occupational Safety and Health Act of 1970. Under MSHA, the maximum civil penalty for violation of a standard is \$10,000 - under OSHA it is \$1,000. Under MSHA, the penalty for a willful violation is \$25,000 or up to one year in jail, or both; and for such a violation after the first conviction this jumps to \$50,000 or up to five years in jail, or both.

OSHA, on the other hand, sets the maximum penalty for a willful violation at not more than \$10,000 or up to six months in jail, or both. For a willful violation after the first conviction, the maximum penalty is \$20,000 or up to one year in jail, or both.

This severity of penalties under MSHA is grossly unfair. Crushed stone and sand and gravel operations are small operations and the average price per ton of the construction aggregates they produce is very low compared to other commodities. The working conditions in such operations are similar to those found at construction sites, where OSHA applies.

(4) Section 5 of S. 1173 would make significant changes in the training provisions of section 115 of the Act. NCSA is generally in agreement with the changes proposed and the greater flexibility those changes would grant to the Secretary and the operator. Certainly, more effective safety training, adapted to the special characteristics and needs of individual mines, will result.

NCSA is not persuaded, however, that the requirement for training plans to be individually approved by the Secretary is in the best interest of effective training. Each operator should be required to file a training plan but the Secretary cannot be expected to know whether the plan, as filed, is (in the words of section 5(b) of S. 1173), "...necessary and appropriate for the particular tasks performed by the miners and the conditions existing at the particular mine." Subsequent inspections, observation of the training program in progress, and evaluation of other appropriate factors will be necessary. NCSA recommends that, instead, the Secretary be authorized to require additions or changes to the training plan when he finds that the plan in use is not adequate for the conditions or adapted to the needs of the miners of a particular operation.

NCSA has been a strong advocate of safety training throughout its 65-year history. At the same time, NCSA has consistently spoken out against so-called safety training which is based upon arbitrarily set numbers of hours or rigidly prescribed curricula, both of which inhibit responsiveness of the miner safety student and the operator who should provide the training.

S. 1173's language in section 5(a) would eliminate the strictly mandated 24 hours of training and the specifically prescribed courses which must be included under the terms of the 1977 Act. We fail to understand why this reasonable, practical and productive provision was not included in S. 1173 to cover underground miners as well. If a prescription is good for surface miners' health and safety, it should also be good for the health and safety of underground operators and their miners.

NCSA urges the subcommittee to make such changes in section 115(a)(1) as are proposed for section 115(a)(2) of the existing Federal Mine Safety and Health Act.

(5) Section 6 of S. 1173 would authorize the Secretary to provide penalty-free consultation and assistance to any mine operator. This is a very welcomed provision and it should improve safety and health conditions.

However, NCSA strongly objects to two facets of section 6 of S. 1173.

The first objection relates to the provision in the last sentence of section 6(b)(1) which authorizes the Secretary to provide such consultation and assistance upon his own initiative. The rationale for providing consultation and assistance is that it is a mechanism for the constructive resolution of problems through cooperative discussions between the parties - in this case industry and government. To be successful and effective it should be initiated at the request of the operator.

Consultation and assistance at the Secretary's initiative is counterproductive because it ignores the essential ingredient of success, i.e. mutuality of interest. Elimination of this superfluous provision will not curtail or hamper the Secretary's ability to inspect or to promote safety through his standard inspection procedures. It is wholly unnecessary since there are already many opportunities available to the Secretary to fully monitor an operator's attitudes, safety and health and accident prevention programs in order to ensure management attention to improvement of working conditions which will result in improved miner safety and health. MSHA already has ample opportunity to do this. Consultation and assistance visits should result from the operator's initiative to improve specific working conditions of which he is aware.

The second objection relates to the provision in section 6(b)(3) of S. 1173 which states, "Advice given in the course of consultation and assistance at any mine conducted pursuant to this subsection shall not be binding on the Secretary in the event of any subsequent action with respect to such mine."

There is no incentive for an operator to follow consultation and assistance advice if the Secretary is later free to ignore it. The purpose and desirability of penalty-free consultation and assistance is to provide miners and operators with the benefit of the expertise and experience we are so often told resides in the MSHA inspection force.

If the Secretary is not bound by the recommendations made to operators, the entire consultation and assistance provision is valueless.

Mr. Chairman, as you stated on the Senate floor when you introduced S. 1173, there are other changes worthy of support not contained in S. 1173 at present.

NCSA firmly believes that additional important provisions should be added to the bill to further amend the Federal Mine Safety and Health Act of 1977. We respectfully wish to discuss these additional provisions.

The first of these concerns the fact that the 1977 Act does not give either the mining industry or the miners it professes to protect an effective voice in the development or review of health and safety standards. The 1977 Act virtually disenfranchised operators and miners. Although interested parties are allowed to make comment on some MSHA rulemaking, there are virtually no constraints upon critical actions by the Secretary unless he chooses to impose them.

The first sentence of section 101(a) of the Act removes the requirement that the Secretary observe certain provisions of the Administrative Procedure Act in developing, promulgating or revising health and safety standards. By providing that the Secretary can act without regard to the provisions of sections 556 and 557 of title 5 of the U.S. Code, the Act allows the issuance of standards by notice and comment rulemaking. There is no opportunity for formal "on the record" presentation and cross-examination of oral and documentary evidence.

Under section 101, the Secretary is not required to use advisory committees. If he does choose to use one, he is under no obligation to follow its recommendations. He is required merely to hold a public hearing on proposed rules and to take a transcript of the hearing which shall be available to the public.

Under the provisions of the Federal Metal and Nonmetal Act of 1966, a more reasonable and fair procedure was mandated - a procedure which was fair to industry, labor and government and which resulted in good standards which were the result of industry, labor and government arriving at consensus agreements.

Under the 1966 Act, the Secretary was required to appoint an advisory committee comprised of an equal number of labor and management representatives and one or more representatives of state safety agencies. All members of the advisory committee were knowledgeable in the field of mine safety and health. All proposed standards were subject to advisory committee review, revision and approval.

Advisory committee recommendations to the Secretary cleared the way for the Secretary to publish a proposed standard. If it were proposed exactly as recommended by the advisory committee, interested persons were allowed to file comments but no public hearings were allowed.

If the proposed standard had been changed in any way from the standard recommended by the advisory committee, then any affected party could request a public hearing conducted in accordance with the provisions of sections 556 and 557 of the Administrative Procedure Act, title 5 of the United States Code.

The public hearing was held before an Administrative Law Judge (ALJ). Any party - government, industry or labor - could bring expert witnesses before the ALJ to present testimony. Cross-examination of witnesses was allowed by any of the participating parties. The ALJ then determined whether further study was required, whether the proposed standard should be withdrawn, or whether the proposed standard should be promulgated. The ALJ could also allow all parties to work out an agreeable compromise standard.

This system: 1) allowed ample opportunity for input by all parties; 2) guaranteed a formal hearing before an ALJ in those instances when the agency did not accept the recommendations of the advisory committee; 3) allowed the use, and cross-examination, of expert technical witnesses to develop all facts on all sides of an issue; and 4) allowed all parties concerned to arrive at a compromise standard on the basis of the facts presented.

The standards which were created through this fair procedure have generally been workable and comprehensible. At one time or another, the agency, labor or management may not have been pleased with an ALJ decision on standards, but in all cases, each party had a fair opportunity to present its facts and arguments.

Under the 1977 Federal Mine Safety and Health Act, the above system was abolished and in its place, the Secretary has been given the option to determine if an advisory committee will be established to assist in formulating standards. The composition of such committees has been radically changed. The 1977 Act requires a majority of public representatives, not having any economic interest in mining, and the chairman of the advisory committee must be a public member.

In the first year the 1977 Act was effective, advisory committees were formed by the Secretary for two rulemakings. Each of these advisory committees had three labor representatives, three management representatives and seven so-called public members.

The "public" members of these two advisory committees included such individuals as: several retired MSHA inspectors; a staff member of a state chapter of the American Heart Association; several private management consultants; a college professor with limited mining knowledge; an engineer who had graduated from college only one year prior to this assignment; and, serving as chairperson for one of the committees, an instructor from Cornell University's School of Hotel Management.

The results of these two advisory committees were chaotic, confusing, and often impractical, causing unusual problems for industry, labor and the regulatory agency.

The first advisory committee to be used by MSHA in rulemaking was one which formulated MSHA's controversial training rule.

This advisory committee rejected, out of hand, industry comments to consider any cost analysis of these regulations. Rather than recognizing the different training needs of the different commodity groups and operation sizes, the committee recommended the same regulations for coal as for other types of mining, recognizing only the differences between underground and surface operations. Courses not required by the Act were added, and MSHA-approved instructors not required by the Act were added.

The agency did hold public hearings on the proposed training rule. Such public hearings are now meaningless exercises, since sections 556 and 557 of the APA which require hearings before an Administrative Law Judge and allow cross-examination of witnesses are no longer applicable. With the Administrative Procedure Act effectively negated by the 1977 Act, the public hearings no longer bear any resemblance to those held under to 1966 Act.

The hearing is considered "informal." It is heard before a panel of MSHA employees. Those wishing to comment merely present statements to the panel. There is no cross-examination. There are no witnesses. The agency has no requirement to answer any questions posed by those presenting comments and does not do so. There is no judge and there are no decisions rendered.

After the final standard is promulgated, any party adversely affected by the final standard has only sixty days under the 1977 Act to request review by the United States Circuit Court of Appeals. This is not sufficient time because MSHA has promulgated final standards with delayed effective dates. Often, MSHA has issued clarifying memoranda outside the sixty day period which drastically altered the anticipated effect of the final standard or rule.

The other advisory committee - and the last one ever used by MSHA in rulemaking - was charged with reviewing 229 advisory standards for metal and nonmetal mining to determine if such advisory standards should be revoked, left as written and made mandatory, or revised and made mandatory.

Of the 229 existing advisory standards, the advisory committee recommended that 68 be revoked and 161 be made mandatory. Some of the 68 slated for revocation were consolidated with other standards. Virtually every one of the 161 advisory standards proposed to be made mandatory would require the quarry operator to:

Of the 229 existing advisory standards, the advisory committee recommended that 68 be revoked and 161 be made mandatory. Some of the 68 slated for revocation were consolidated with other standards. Virtually every one of the 161 advisory standards proposed to be made mandatory would require the quarry operator to:

1. provide specified training or instruction to personnel;
2. perform, on a regular basis, new inspection or recordkeeping functions;
3. construct or purchase new equipment, or parts or accessories for existing equipment; and,
4. construct something to replace existing facilities.

Despite the staggering burden which 161 new mandatory standards would place upon quarry operators, available manpower, and limited economic resources, the 161 mandatory standards were required to be promulgated within 30 days of the end of the comment period, pursuant to section 301(b)(2) of the 1977 Act. No provisions existed in any of the 161 proposed mandatory standards for the grandfathering of old equipment nearing the end of its useful life; for a graduated phasing-in or staggering of effective dates to allow support industries to manufacture, ship and deliver items which were mandated by the standards; or for time to instruct quarry personnel in the content and application of this large volume of new mandatory standards.

All these matters were brought before the advisory committee. It considered them not to be within its purview or responsibility.

One of these new standards proposed by the advisory committee would have cost \$160,000,000 in compliance expense for crushed stone quarries alone. Fortunately, MSHA decided later not to promulgate it as a final standard.

Although the 1977 Act required the agency to promulgate this rulemaking within 30 days of the comment period, it took approximately nine months for the agency to revise and change those 161 proposed regulations recommended by a poorly constituted advisory committee. For more than one year after these standards were made final, MSHA was still issuing clarifying memos to explain their enforcement and effect.

Today, MSHA is extremely reluctant to use advisory committees due to the difficulties encountered with the two used in 1978.

This year, the mining industry is again faced with regulatory problems caused by the 1977 Act. The only difference is that MSHA is now attempting to clean up existing standards to eliminate redundancy, to clarify ambiguities and to reduce recordkeeping burdens.

Eight major sections of the standards have been under study by MSHA task groups. Preproposal drafts on seven of these sections have been distributed for informal comment since the first of this year. One more will be ready for industry and labor review in the next two to four weeks.

The problem now is that the proposals are hitting industry and labor like an avalanche. At the Mine Safety and Health Conference hosted by MSHA early last month, representatives from labor and industry expressed serious doubt that they would be able to keep abreast.

Worse still, MSHA has set for itself a rulemaking schedule which will see major regulatory action every month between now and October, 1984, except for the months of April and August, 1984. A copy of MSHA's Metal and Nonmetal Rulemaking Schedule is attached to this testimony.

NCSA has thus far bitten the bullet. Its members and staff have reviewed and commented on every regulatory proposal issued this year. Many other mining associations have not been able to do so. The danger here is that of runaway rulemaking. In the past, proposed standards which embodied impractical, ineffective or unjustified costs could be discredited by labor and/or by industry in the measured, controlled procedures followed under the 1966 Federal Metal and Nonmetallic Mine Safety Act. Today, under the 1977 Act, these controls are gone. Without the full protections of the Administrative Procedure Act (particularly sections 556 and 557) no interested party can effectively test the theory of a determined proponent. Moreover, practical review of the "informal" style of rulemaking permitted by the Act is sharply curtailed. Reviewing courts are required to uphold final rules unless they are "arbitrary, capricious, or an abuse of discretion," a standard which is extremely difficult to satisfy:

Senator Grassley has proposed a Regulation Reform bill, S. 1080, which recognizes the deficiencies of such a system as called for in the present mine safety and health law. S. 1080 would provide for the addition of several procedures to federal rulemaking. S. 1080 would require cross-examination in major rulemaking to assure that there is a testing of the factual basis of proposed rules. The mine safety law should be amended to allow all affected parties to probe and test the factual basis for rules proposed by MSHA.

Another important provision which NCSA believes should be included in an amendment bill is to authorize individual states to enforce the federal mine safety and health programs within their own borders if they choose to do so.

There were seven states with approved state plans under the old Federal Metal and Nonmetallic Mine Safety Act of 1966. Under their state plans, these seven states each maintained safety records superior to the national average. They were staffed by professional mining inspectors and their state laws and regulations were at least as stringent as the federal laws and regulations.

Under the 1977 Act, state plans are not authorized but some states continue to inspect our quarries. This places an unnecessary double inspection load on our operations and it is a waste of government resources.

If authorization for state plans were added to the 1977 Act, worker protection would be maintained in states which MSHA authorized as state plan jurisdictions. Once approved, MSHA would be required to monitor the state's performance. Authorization of state plans would also allow MSHA to utilize its scarce resources elsewhere, thereby enhancing overall mine safety and health enforcement nationally.

Mr. Chairman, many of the provisions presently contained in S. 1173, and many of the changes we recommend here today may not be acceptable to all parties interested in mine safety legislation. This points up the basic problem our industry has with the 1977 Act. The Act is a patched up version of an earlier coal act. Indeed, several titles in the 1977 Act pertain only to coal mining. Just as those titles would not be appropriate to stone, sand and gravel, we do not suggest the relief necessary for stone, sand and gravel is appropriate to coal or other mineral commodities.

I would like to strongly urge this subcommittee to recall something I mentioned earlier in this testimony. In early 1979, after almost a year under the provisions of the 1977 Act, a group of representatives of aggregate industry associations determined three possible legislative goals, one of which was the establishment of a separate title to the 1977 Act for sand, gravel and stone. Such a separate title could tailor this law to the conditions found in our industry and would make the Act more effective and less burdensome on our industry.

Such a separate title would have to stand alone. It would have to address the conditions of the stone and sand and gravel industries and not be simply a repeat of the provisions found to be necessary for other mining industries.

Quarries and sand and gravel pits are different from all other mining operations. They are closely related to construction. They do not present the same environmental and workplace hazards found in mines producing other mineral commodities. The best interest of our workers is not served by a law which has evolved over the years in response to a long series of catastrophic events occurring in large, deep underground mines.

Until federal legislation provides special recognition of the distinct character of our operations, NCSA and its members will need to continue to seek relief from the 1977 Act.

Thank you for the opportunity to be here this morning to present the views of our industry.

METAL AND NONMETAL RULEMAKING SCHEDULE

June 1983

Preproposal draft - gassy mines and air quality standards

July 1983

Preproposal draft - explosive standards

August 1983

Final rule - wire rope standards

Proposed rule - fire prevention

Proposed rule - use of equipment

September 1983

Proposed rule - ground control

Preproposal draft - Part 48 training regulations

October 1983

Proposed rule - load, haul, and dump

Public hearings - fire prevention; public hearings - Use of Equipment

November 1983

Proposed rule - electricity

Proposed rule - gassy mines

Public hearing - ground control

December 1983

Proposed rule - air quality

Proposed rule - explosives

January 1983-1984

Public hearings - load, haul, and dump

February 1983-1984

Public hearings - electricity and explosives

March 1984

Public hearings - air quality and gassy mines

May 1984

Final rule - fire prevention and use of equipment

June 1984

Final rule - ground control

July 1984

Final rule - load, haul, and dump

September 1984

Final rule - explosives

October 1984

Final rule - air quality, electricity and gassy mines

Senator GRASSLEY. Thank you.

Mr. Pettinos.

Mr. PETTINOS. Thank you, Mr. Chairman.

My name is Lewis M. Pettinos, and I am president of George F. Pettinos, Inc., which has offices in Ardmore, Pa. My company operates two industrial sand operations and one sand and gravel operation in southern New Jersey. The company was founded by my grandfather in the late 1800's, and has been continuously owned and operated by my family to this day.

We always have been, and we remain deeply concerned with the safety and health of our employees. I am proud to say that our three plants have won numerous safety awards from both the National Industrial Sand Association and the National Sand and Gravel Association.

I have been involved with the safety and health activities of both the National Sand and Gravel and the National Industrial Sand Associations for many years. Presently, I am treasurer of NSGA and previously have served 2 years as the president of NISA.

This statement is a consolidated statement representing the views of both NSGA and the National Industrial Sand Association. I am accompanied on my right by Kevin F. Crawford of Unimin Corp., chairman of the Safety and Health Committee of the National Industrial Sand Association. Also accompanying me are Kenneth R. Tobin, director of legislative affairs for NSGA and NISA, and Richard A. Morris, director of regulatory affairs for NSGA and NISA.

The National Sand and Gravel Association has been the recognized spokesman for the sand and gravel industry for more than 65 years. The association's membership produces a substantial majority of the sand and gravel sold annually in the United States.

The industrial sand industry is small, as measured by tonnage, when compared to other extractive industries. The industrial operations are small and stable concerns that employ relatively few people. There are less than 50 companies significantly engaged in the production of industrial sands, and they operate less than 150 plants. Many of these companies are still small, family owned companies, run by family members.

Mr. Chairman, NSGA and NISA appreciate the opportunity to once again testify before the Senate Labor Subcommittee concerning proposed changes in the Mine Safety and Health Act. The testimony we presented before this same committee, on March 12, 1981, is referenced, since we continue to believe that the specific legislative defects of the 1977 act, which were detailed in those remarks, are still a problem today, despite fairer and more enlightened administration of the act by Assistant Secretary Ford B. Ford.

Assistant Secretary Ford has substantially reduced the bitter, adversarial atmosphere that existed between MSHA and our two industries. He has consistently kept open channels of communication and attempted to redress the arbitrary and inflexible administration of the act that so antagonized the many small operators that comprise our two industries. Unfortunately, there can be no guarantee that the changes Mr. Ford has introduced will survive his tenure at MSHA unless, of course, legislative amendment of the act incorporates necessary reforms into statutory law.

To this end, S. 1173 has been proposed. The bill contains four key legislative changes that would hopefully reduce the punitive and inflexible character of the current law in the areas of penalties, inspections and training. It closely parallels a draft proposal of an amendment that Mr. Ford asked our two associations to consider and comment on over a year ago.

We applaud the general thrust and intent of the legislative changes that S. 1173 would make, but are concerned that too much authority is being delegated to MSHA to establish regulations that will define the real nature of those legislative reforms.

For example, the repeal of two mandatory surface mine inspections per year is desirable, but the criteria for determining how often these operations will be inspected is left almost entirely to the discretion of the Assistant Secretary. A similar problem applies to the training requirements.

Because of our concern over the vague and unspecific language of S. 1173 and our firm conviction that many other problems exist with the 1977 act that have not been addressed by S. 1173, our two industries continue to believe that our operations would be better served by being transferred to OSHA. This has been our consistent position for the past 4 years and has been reaffirmed on several occasions.

Senator Wallop, and almost a dozen Members of the Senate, have again introduced the MSHA to OSHA transfer bill, S. 980. We strongly endorse this approach, especially in the absence of any public support for S. 1173, or the House companion bill, H.R. 3338, from organized labor or the House Democratic leadership, particularly Chairman Joseph Gaydos of the Health and Safety Subcommittee of the House Education and Labor Committee.

Mr. Chairman, the Congress has struggled for over 4 years with the numerous problems created by the 1977 Federal Mine Safety and Health Amendments Act. On several occasions, both the House and Senate have approved provisions to transfer our industries to OSHA's jurisdiction. Undoubtedly, some members voted for transfer in the hope that it would force action on reform amendments to the act. Indeed, Chairman Gaydos and others have repeatedly promised to come forth with meaningful amendments to the act, only to renege in the face of opposition from organized labor. The repeal of last year's appropriations rider transferring our operations to OSHA has also relieved political pressure for action on MSHA reform by the House Education and Labor Committee, despite the fact that repeal of the rider was supported by many Members of Congress, only after promises of legislative reform to the act were made by the authors of the repeal provision.

Mr. Chairman, we are anxious to see what reception S. 1173 receives from opponents of MSHA transfer. We firmly believe that while S. 1173 is a step in the right direction, it falls far short of providing an adequate overhaul and improvement in the Mine Safety and Health Act for our two industries. Included in our written statement are the reasons we believe OSHA would more appropriately be the health and safety agency to have jurisdiction over our two industries.

In conclusion, our industries strongly feel that there are many problems with the current Federal Mine Safety and Health Act.

Many of these problems stem from the inclusion of all types of mineral extraction operations under a single statute. The sand and gravel industry and the industrial sand industry believe that they stand little chance of being segregated from coal mines as long as they are covered by the same statute.

We are not asking to be exempt from Federal safety standards. We strongly believe there is a responsibility to provide a safe working environment for our employees.

We do not believe that these two industries can continue under the present act. We urge the Congress to act favorably upon S. 980 which would transfer our two industries from the Mine Safety and Health Act to the Occupational Safety and Health Act.

Thank you, Mr. Chairman, and I would be happy to attempt to answer any questions you might have.

[The prepared statement of Mr. Pettinos follows:]

Statement of Lewis McM. Pettinos
on behalf of the
National Sand and Gravel Association
and the
National Industrial Sand Association

Mr. Chairman and Members of the Committee, my name is Lewis McM. Pettinos and I am President of George F. Pettinos, Inc., which has offices in Ardmore, Pennsylvania. My company operates two industrial sand operations and one sand and gravel operation in southern New Jersey. The company was founded by my grandfather in the late 1800's and has been continuously owned and operated by my family to this day.

We always have been and we remain deeply concerned with the safety and health of our employees. I am proud to say that our three plants have won numerous safety awards from both the National Industrial Sand Association (NISA) and the National Sand and Gravel Association (NSGA).

I have been involved with the safety and health activities of both the National Sand and Gravel Association and the National Industrial Sand Association for many years. Presently I am the Treasurer of NSGA and previously have served two years as the President of NISA.

This statement is a consolidated statement representing the views of both NSGA and the National Industrial Sand Association. I am accompanied by Kevin F. Crawford of Unimin Corporation, Chairman of the Safety and Health Committee of the National Industrial Sand Association. Also accompanying me are Kenneth R. Tobin, Director of Legislative Affairs for NSGA and NISA, and Richard A. Morris, Director of Regulatory Affairs for NSGA and NISA.

Sand and gravel are basic construction materials. They are the basic ingredients in portland cement concrete as well as asphaltic concrete. Sand and gravel are used in virtually every type of construction including such diverse things as hospitals, highways, schools, bridges, airports, dams and individual residences.

The National Sand and Gravel Association has been the recognized spokesman for the sand and gravel industry for more than 65 years. The Association's membership produces a substantial majority of the sand and gravel sold annually in the United States.

The industrial sand industry is small, as measured by tonnage, when compared to other extractive industries. The individual operations are small and stable concerns that employ relatively few people. There are less than 50 companies significantly engaged in the production of industrial sands, and they operate less than 150 plants. Many of these companies are still small family-owned companies run by family members.

The industrial sand industry extracts and processes high purity silica, a mineral of limited occurrence that is a necessity for the manufacture of a wide range of products. Industrial sand is an indispensable ingredient in glass — it becomes walls and windows of buildings, mirrors, fiberglass, curtains, light bulbs, television tubes, eyeglasses and other optics and even windows for spacecraft. It is an integral part of boat and automobile bodies, food and beverage containers, laboratory and hospital equipment. As an ingredient in ceramic products, it becomes chinaware and porcelain, cooking ware, household appliances, pottery, bathroom fixtures, floor and wall lining. Silica sand is also used extensively for water filtration and increasingly as "frac sand" to fracture oil and gas wells, thereby increasing production. This fracturing squeezes more oil and gas out of existing wells and plays an increasingly important role in holding down energy prices.

The refractory properties of industrial sand make it a necessity to ferrous and nonferrous foundries and for steel mills which use it as a surface lining in conveying, casting and molding of molten metals. It is used extensively in steel

- 3 -

production and in the manufacture and maintenance of almost all kinds of structures, machines and machinery components. Ground silica is an ingredient in household and industrial cleansers and paints. Nearly all industries in our complex civilization use industrial sand in some way and for the majority of these uses there are no known suitable substitutes.

Mr. Chairman, NSGA and NISA appreciate the opportunity to once again testify before the Senate Labor Subcommittee concerning proposed changes in the Mine Safety and Health Act. Testimony we presented before this same Committee, on March 12, 1981, is referenced since we continue to believe that the specific legislative defects of the 1977 Act, which were detailed in those remarks, are still a problem today, despite fairer and more enlightened administration of the Act by Assistant Secretary Ford B. Ford.

Assistant Secretary Ford has substantially reduced the bitter adversarial atmosphere that existed between MSHA and our two industries. He has consistently kept open channels of communication and attempted to redress the arbitrary and inflexible administration of the Act that so antagonized the many small operators that comprise our two industries. Unfortunately, there can be no guarantee that the changes Mr. Ford has introduced will survive his tenure at MSHA, unless, of course, legislative amendment of the Act incorporates necessary reforms into statutory law.

To this end, S. 1173 has been proposed. The bill contains four key legislative changes that would hopefully reduce the punitive and inflexible character of the current law in the areas of penalties, inspections and training. It closely parallels a draft proposal of an amendment that Mr. Ford asked our two associations to consider and comment on over a year ago.

We applaud the general thrust and intent of the legislative changes that S. 1173 would make, but are concerned that too much authority is being delegated to MSHA to establish regulations that will define the real nature of these legislative reforms.

For example, the repeal of two mandatory surface mine inspections per year is desirable, but the criteria for determining how often these operations will be inspected is left almost entirely to the discretion of the Assistant Secretary. A similar problem applies to the training requirements.

Because of our concern over the vague and unspecific language of S. 1173 and our firm conviction that many other problems exist with the 1977 Act that have not been addressed by S. 1173, our two industries continue to believe that our operations would be better served by being transferred to OSHA. This has been our consistent position for the past four years and has been reaffirmed on several occasions, (most recently in January of this year by MSGA), by our Boards of Directors after careful consideration of all options.

Senator Wallop, and almost a dozen members of the Senate, have again introduced the MSHA to OSHA transfer bill - S. 980. We strongly endorse this approach, especially in the absence of any public support for S. 1173 or the House companion bill, H.R. 3338, from organized labor or the House Democratic leadership - particularly Chairman Joseph Gaydos of the Health and Safety Subcommittee of the House Education and Labor Committee.

Mr. Chairman, the Congress has struggled for over four years with the numerous problems created by the 1977 Federal Mine Safety and Health Amendments Act. On several occasions, both the House and Senate have approved provisions to transfer our industries to OSHA's jurisdiction. Undoubtably, some members voted for transfer in the hope that it would force action on reform amendments to the Act. Indeed, Chairman Gaydos and others have repeatedly promised to come forth with substantive amendments to the Act only to renege in the face of opposition from organized labor.

The repeal of last year's appropriations rider transferring our operations to OSHA has also relieved political pressure for action on MSHA reform by the House Education and Labor Committee, despite the fact that repeal of the rider was supported by many members of Congress only after promises of legislative reform to the Act were made by the authors of the repeal provision.

Mr. Chairman, we are anxious to see what reception S. 1173 receives from opponents of MSHA transfer. The Mine Safety and Health Act, remains a ticking time bomb just waiting to explode in the face of Congressional inaction. Assistant Secretary Ford B. Ford has managed to temporarily defuse this bomb by intelligent administration of the Act, but the underlying failures of the Act will undoubtedly surface again if major legislative surgery is not undertaken. We firmly believe that while S. 1173 is a step in the right direction, it falls far short of providing an adequate overhaul and improvement in the Mine Safety and Health Act for our two industries. Included in our written statement are the reasons we believe OSHA would more appropriately be the health and safety agency to have jurisdiction over our two industries.

Transfer to OSHA

The 1977 Act is simply an amendment to the 1969 Coal Mine Safety Act and still, as a matter of fact, preserves three titles within the legislation relating to coal only.

The legislative history of the 1977 Act and particularly the floor debate at the time it was pending before the Senate, indicates that the Members of Congress strongly desired that standards should be issued for various types of mining situations rather than across-the-board standards to cover all mines. Regretably, MSHA is currently preparing to consolidate all safety and health standards in Parts 55, 56, and 57, into a single Part 58. This will compound the problem created by

MSHA when it failed to promulgate separate standards relating to enforcement, penalties, training, recordkeeping and reporting, blatantly ignoring the will of Congress. In the case of the training standards, where the agency has failed to distinguish between types of operations, the only distinction that is made is between underground and surface mines. No consideration is given as to whether there are 3,000 employees at a particular operation or three employees.

Any rational comparison between MSHA and OSHA Acts reveals that the Mine Safety and Health Amendments Act of 1977 is probably the most punitive civil statute ever enacted by the Congress. It operates from the presumption that all management is guilty and should be punished severely. The Occupational Safety and Health Act, on the other hand, when compared with the Mine Act, provides for a framework of cooperation between government and industry before its punitive provisions go into effect. Despite the many problems faced by business with OSHA, which to some extent have been corrected during the past couple of years, we believe our industries would more appropriately be regulated by OSHA for the following reasons:

1) Under the 1977 Mine Act a mandatory penalty must be imposed for each and every violation which an inspector believes may have occurred at a particular site. Under OSHA a notice may be issued in lieu of a citation for de minimus violations which have no direct relationship to safety or health, substantially reducing the adversarial relationship;

2) The Mine Act forbids consultation with operators for the mutual benefit of workers to establish a safer work environment, except in the very limited Compliance Assistance Visit program. OSHA, on the other hand, provides authorization for an on-site consultation program whereby specialists in safety and health will come to a plant and recommend changes to effect compliance and improve the workers environment;

3) MSHA requires 24 hours of training, 8 hours of which must be completed before a miner ever commences active work. Much of this training is unrelated to the practical training which is necessary in order to teach a new employee to perform his

work in a safe and efficient manner. Under OSHA an employer has the flexibility of devising his own training program suitable to the conditions of his business. The effectiveness of his training is judged by individual performance standards;

4) The Congress has provided a great incentive for achieving safe working conditions by allowing a limited exemption from certain burdensome requirements for small businesses with good safety records;

5) The 1977 Mine Act establishes a regulatory development process which can only be described as grossly unfair. There is no provision in the process requiring the agency to respond to the comments of affected parties or for any review of a proposed new or modified regulation by an impartial body until it becomes a final standard. Even at that point, the standards review process is assigned to the US Court of Appeals, a provision designed to discourage challenges of bureaucratic power grabs. Under OSHA it is possible to have an administrative review of a proposed regulation at a public hearing before an examiner subject to the provisions of the Administrative Procedures Act and with the right of cross examination before it becomes a final regulation. Even then, affected parties may immediately challenge the regulation in the federal district court asking for immediate injunctive relief and judicial review;

6) MSHA provides authority for withdrawal orders based on a situation where the inspector serves as prosecutor, judge and jury. Under OSHA it is necessary to go to the district court and prove a case for a temporary restraining order to shut down an operation.

As can be seen, OSHA provides the type of regulatory flexibility that is most appropriate for our two industries which are composed of small, predominantly family-held operations.

The extraction of our products is similar to excavation work performed by construction operations normally covered by OSHA. The type of equipment we use currently includes scrapers, front end loaders, pumps, compressors, conveyor systems,

dump trucks and dredges. This type of equipment is vastly different from the highly specialized equipment used by deep underground mines. From our perspective, the fatal flaw with the 1977 Mine Act is its failure to adequately distinguish the vast differences between our two mineral extraction industries and other dissimilar mining operations.

In conclusion, it should be obvious that there are many problems with the current Federal Mine Safety and Health Act. Many of these problems stem from inclusion of all types of mineral extraction operations under a single statute. The sand and gravel industry and the industrial sand industry believe that they stand little chance of being segregated from coal mines as long as they are covered by the same statute. We are not asking to be exempt from federal safety standards. We strongly believe there is a responsibility to provide a safe working environment for our employees. Prior to 1979, under MESA, the federal government was extremely helpful when working with us to find solutions to our safety and health problems.

We do not believe that these two industries can continue under the present Act. We urge the Congress to act favorably upon S. 980 which would transfer our two industries from the Mine Safety and Health Act to the Occupational Safety and Health Act.

Senator GRASSLEY. Thank you.

It is my understanding that the administration does not support the OSHA/MSHA transfer of sand, gravel, and stone surface operations. Absent a transfer provision or in the alternative, a separate title for sand, gravel, and stone, would you support S. 1173?

Mr. PETTINOS. Would you repeat that question, Senator?

Senator GRASSLEY. Certainly. First of all, it is my understanding that the administration does not support the OSHA/MSHA transfer of sand, gravel, and stone surface operations. Is there any disagreement on that?

Mr. PETTINOS. No, sir.

Senator GRASSLEY. Fine. Absent these transfer provisions, or at least as an alternative, a separate title for sand, gravel, and stone, would you support S. 1173?

Mr. PETTINOS. I really, speaking for our two industries, do not believe I could, because I do not believe you can change the 1977 act in a way sufficient to provide the relief necessary for our industries. To have attempted to look at that act time and time again and keep coming to the same conclusion, that transfer to OSHA is the only sensible, cost-effective way to change it.

Senator GRASSLEY. Thank you.

Senator DENTON. Mr. Chairman, could Mr. Christie address that?

Senator GRASSLEY. Yes. As a matter of fact, I was going to invite all three panelists to address the question.

Mr. CHRISTIE. Thank you, sir. Yes, but we would certainly support that that is up front in S. 1173 right now. But as our statement indicated to you right this minute, and the more detailed answer is in our full statement, there is much more that needs to be done, but relief is what we are seeking.

Thank you.

Mr. ROVERUD. The National Limestone Institute would accept that provision with the amendments being offered.

Senator GRASSLEY. My next question is, appreciating the unique nature of your underground operations, would you support S. 1173 absent the National Limestone Institute's amendments on pages 13 and 14 of your written statement—particularly the amendment which eliminates the four annual underground inspections?

Mr. ROVERUD. The underground amendments are very important to us, but we do support the bill, as we said.

Senator GRASSLEY. So, then, you would not support the bill without these provisions?

Mr. WILLIAMS. Senator, within our guidelines of policy from our board of directors and executive committee, we do support S. 1173. What we want to do, however is to point out that there are other vital areas that we believe are sensitive and important and need to be addressed by the committee in the amendatory process; we recommend those amendments. But have endorsed S. 1173.

Senator GRASSLEY. I see. So even without your amendments, you would still support it?

Mr. WILLIAMS. Yes, sir, but now that you raise the question, I do think it only fair to point out that we have long since supported the amendatory process. In the first year, 1981, NLI did nothing except try to get the administration to move toward the amendatory process. The reform that was suggested—by simply transferring

our industry over to OSHA—we did not support. In 1982, we did not appear on the Hill in any manner or means in opposition to that transfer amendment. We nonetheless still think that the act needs to be amended, but if it is not sufficiently amended, it becomes, I think, mandatory that our industries all get together and try and get to the bottom line of relief for our industry—whatever that may reasonably and practicably be at that time. We are going to continue to support and urge this amendatory process as long as we believe it has any chance of clearing both the Senate and eventually the House. And one major obstacle was removed when the administration potential major obstacles to the amendatory process are being removed. We applaud that for the first time the administration has come out and said what it will do. And we applaud Senator Nickles for introducing this legislation, and those Members in the other body who have introduced companion legislation.

Senator GRASSLEY. I meant to address the question to the entire panel so if any of you have any comments you want to add at this point, please do so, before I go on to my next question.

Mr. CHRISTIE. Yes, Senator Grassley, thank you. If I may, I would ask my associate, Mr. Hollenbach, to speak to the question that you have just raised.

Mr. HOLLENBACH. I think that I should say that the National Crushed Stone Association continues in its support of the transfer bill as well, Senator Grassley. We would like to look at S. 1173 as a viable alternative to it, and that of course is based on whether or not these additional suggestions might be followed.

Senator GRASSLEY. Thank you.

Now before I go on to another question, did you have anything to add, Mr. Pettinos?

Mr. PETTINOS. No.

Senator GRASSLEY. I earlier asked this question of Mr. Ford, who was the first witness. Section 3 of this bill would remove the statutory requirement of the 1977 act for two annual mine inspections for surface mines if the mine meets certain criteria to be established by this section.

For the record, and calling on your immediate experience with the operation of mines, as well as your relationship with inspectors, why are these inspections so cumbersome?

Mr. ROVERUD. Well, from my standpoint as an operator in Minnesota and Iowa, we operate portable plants that move from one quarry to another. In a given year, each plant might move 8 to 12 times. Under the law, that is two inspections per mine or per equipment for the entire year. If you move 12 times, that means that you could have 24 inspections, looking at the same equipment, for that calendar year. It was getting to be a very cumbersome situation, where we were being continually inspected, week after week. Every time we moved, the inspector was back, looking at the same equipment.

Senator GRASSLEY. Mr. Pettinos.

Mr. PETTINOS. Senator, we found as a practical matter, the inspectors would come in on their mandatory, twice-a-year inspection, and let us say, philosophically, would have to discover violations where violations did not exist. This was one of the things brought out in our testimony under 1981 and prior, as to some of

the problems with the law. We had a change of inspector, and one inspector would come in and find a violation on a specific item which a prior inspector had approved. It became very quickly apparent that without some type of statistics they had on number of violations, it would appear that they were not doing their job, so consequently, they came up with violations, many of them—many of them—meaningless.

Senator GRASSLEY. Mr. Christie.

Mr. CHRISTIE. Yes, Mr. Chairman.

We find it cumbersome in that the work activity of the MSHA inspector is merely repetitious of that that our superintendents and our safety staff do every working day of the year. What it amounts to is that they take away from the productive, safety, and health activities that are already in place. We found that they focus on a limited number of things rather than the activities in which our people are regularly involved, that potentially might be the causes of accidents. Their time wastes ours and misdirects.

Senator GRASSLEY. Thank you.

I have no further questions. Senator Denton, do you have any questions?

Senator DENTON. Yes; thank you, Mr. Chairman.

Mr. Christie, your statement indicates that NCSA opposes the provision in S. 1173 that would exempt mine sites that are owned and operated or operated by a State from regulation under MSHA. You gave some of those reasons in your oral testimony. Would you care to elaborate further than you did in your oral statement regarding your opposition to exempting mine sites operated by a State?

Mr. CHRISTIE. Yes; thank you, Senator Denton.

Typically, there are limited numbers of these, and they are very small operations. One could almost characterize them as gypsy operations. They come and go as the needs may occur within a political subdivision for crushed stone. They are typically not well supervised. Their equipment is not solid and sound. Their employees are not well trained, and their accident record is a result of all of those. In addition, as I indicated in my statement, they create an economic disadvantage for the business operators in the crushed stone industry that is entirely unfair and would be much more so if they were not regulated by any Federal agency at all.

Senator DENTON. Again to you, sir, during the 97th Congress, the Senate and House enacted a 7-month exemption from MSHA regulation for the stone industry. Is there any evidence that during that 7-month exemption period, where was an increase in injury rates for the stone industry?

Mr. CHRISTIE. No, sir. To the contrary, there was improvement in the injury rate in the stone industry. We enjoyed that period of freedom.

Senator DENTON. Has there ever been a period when the stone industry experienced an increase rather than a decline in injury rates, and to what would you attribute that increase?

Mr. CHRISTIE. Senator Denton, there definitely was a period when there has a terrible increase in rates of injuries in the crushed stone industry, and it was completely and absolutely coincident with the initiation of the Mine Safety and Health Act. We

attribute it to the busy work that the Mine Safety and Health Act required of operators. They had us so busy picking nits that we were not able to perform the functions that we were capable of doing.

Senator DENTON. When I was running for office, I looked at a lot of mines in Alabama, surface and subsurface. My study, which was limited to probably a few score hours of the subject, indicated that MSHA and OSHA may have been very well intended and perhaps overdue in terms of a general effort to subdue the rather bad mine injury record, particularly in underground coal mines. It also seems that the effort is—and I am just trying to get an overall feeling from you gentlemen—in a primitive stage and has caused in one field, according to Mr. Christie, an increase in injuries in its good intention. In other cases, it has caused antipathy, and it seems to me, oversimplistic lumping in of things like stonecrushing, surface mining with subsurface mining, ignoring the fact that 13 percent of the mines are responsible for 80 percent of the accidents. I am just trying to figure out how, politically, we can address a problem that would separate out mines or types of operations which need to be separated out. It is my understanding that the OSHA regulations have more flexibility, but with a change in administration, the OSHA regulations could be applied even more simplistically, with worse results than the MSHA regulations could have. And this seems to derive from Senator Randolph, on the one hand, being justifiably concerned about the coal mining record in his State and mostly, and I believe correctly, concerned about the welfare of coal miners underground. Nationally, however, it would seem to me that there would be an effort on the part of the labor unions, the workers as well as the gentlemen who are managing the mines, to get together and find the most cost-effective and yet safe way of doing this thing. Yet I understand the House has absolutely no sympathy for separating out this sort of thing.

Do you have any suggestions as to what we might do to inculcate reason in this, because both labor and management would benefit by a more sane approach to this problem than appears to be the present status quo.

Mr. CHRISTIE. Yes, sir, I would love to handle that question. Separation, division, apartness—the stone industry is not an underground coal mine. It has no bearing on it. Our people do not get black on their faces. We need to be looked at as a unique, distinct, separate entity, and I think therein is the opportunity the Congress has.

Senator DENTON. Well, is that not true of some of the other operations here, such as limestone and so on? Would anyone else like to offer comment on that?

Mr. WILLIAMS. Yes, sir, I would like to. I think as a minimum, Senator, the committee and the Congress need to do statutorily what this administration under Ford B. Ford has been able to do through rule and regulation. That is the minimum that ought to be addressed in dealing with this subject at this point in time.

I am reluctant to keep pointing out, but it was a long 2½ years before the administration came forth with any relief whatsoever.

Senator DENTON. Is this the first time?

Mr. WILLIAMS. Yes, sir. It is the first crack that we have had in the armor. They have done some things through rule and regulation, but only now is there a bill which the administration supports and that we support, in trying to do statutorily what has been done under rule and regulation, and could be changed in another change of administration. Even within this administration, the new Assistant Secretary conceivably could introduce a different way of operating procedures. But basically, the act is terribly complex for our industry that is basically limestone. We are in the limestone mining business. We are predominantly open pit quarry, some underground. But the underground is far different than any coal mine that you could envision, and we are all lumped into that same general act.

The other side of that is that I do think that if there is going to be a serious effort to deal with this, the Senate does need to act and to act on this and then leave it up to us and your help to do what we can in the House. But I think that the time is ripe for that kind of action, and we are very appreciative of the efforts of the subcommittee in this hearing this morning.

Senator DENTON. Well, I understand that the subcommittee chairman, Senator Nickles, is occupied elsewhere on a bill of his. He has come up with initiatives, but they have not been passed, and in my own chairmanships of subcommittees and positions on other committees, including this one, I understand his problem. That is why I ask if you have any suggestions by which we can make it politically palatable. It seems to me that we are being forced to come together, labor and management, in some fields, to a degree in automotive production. Would that not be the case here? Is it not obviously efficacious from both sides to get together on some rather commonsense issues which seem to be highlighted today. I imagine besides limestone, if this is the first effort, there is too much commonality in law between a surface mine and a sub-surface mine in coal, for example. If all that is as it was in 1980, it is still a very frustrating and wasteful situation and maybe not at all conducive to increased health.

Mr. WILLIAMS. Senator, just to be very brief about it, I came into this work with the National Limestone Institute in February 1981. I had no idea, having been in the mining business in the fifties and sixties, that it was the emotional issue that it was in our industry. Industry was completely disrupted as far as State association meetings, badly divided at the national level, and very emotional about the subject of either being transferred to OSHA or amending the Mine Health and Safety Act. That has calmed down tremendously over the past 2 years, and basically, it has calmed down for two reasons. One, the Administration under Mr. Ford has, in fact, by initiative of rule and regulation, given some relief to a very onerous act. Second, the limestone mining industry has been decimated in economic troubles over the last 2 years.

I used to operate mines, and I can tell you that when you do not run overtime, you do not have as many accidents as when you are running day and night and on 6-day shifts. There is no question but that the whole environment has been better for safety in the last couple of years—not necessarily better for profit, but better for safety. We just would miss an opportunity if we do not now take

the good work of Mr. Ford any statutorily apply it to the law. Without it, I think we are gambling on what might happen in the future.

Senator DENTON. Mr. Chairman, I thank you for the time. I will depart. May I ask one brief question?

Senator GRASSLEY. Yes.

Senator DENTON. In your written statement, Mr. Christie, you mentioned the level of penalties under the 1977 Federal Mine Safety and Health Act and compare the MSHA criminal penalties to the Occupational Safety and Health criminal penalties. In your opinion, does this unfairness also extend to the civil penalties?

Mr. CHRISTIE. Mr. Chairman, if it would be appropriate, I have created a comparison of the penalties between OSHA and MSHA so that it is a little easier to see. But very briefly, for a single violation of a standard under OSHA, an operator can be fined up to \$1,000. In contrast, for that same violation, under the jurisdiction of MSHA, the fine can be up to \$10,000. There are similar, huge disparities in the other penalty structures, and I have this detailed, and I would be happy to submit it.

Senator GRASSLEY. It will be inserted in the record.

[The table referred to and additional statements supplied for the record follow:]

5

COMPARISON OF CIVIL PENALTIES
BETWEEN MSHA & OSHA

<u>VIOLATION OF STANDARD</u>	<u>OSHA</u>	<u>MSHA</u>
	\$ 1,000 Maximum	\$10,000 Maximum
<u>WILLFUL VIOLATION</u>	Not more than \$10,000 or up to 6 months in jail, or both	\$25,000 or up to 1 year in jail, or both
<u>After First Conviction</u>	Not more than \$20,000 or up to 1 year in jail, or both	\$50,000 or up to 5 years in jail, or both

STATEMENT OF THE CHINA CLAY PRODUCERS
IN SUPPORT OF S. 1173, THE FEDERAL
MINE SAFETY AND HEALTH AMENDMENTS OF 1983

The China Clay Producers are a group of companies engaged in the surface mining of china clay (or kaolin as it is sometimes called). */ The production of china clay is the largest mining industry in the state of Georgia, and it is an important enterprise in South Carolina and certain other states.

The China Clay Producers support the basic approach of S. 1173 as modified by the specific recommendations included in this statement. S. 1173 is a commendable attempt to refine the federal regulation of mine safety and health in four basic areas: civil penalties, training, inspections, and consultation and assistance visits. The bill's premise is that the health and safety of miners is best achieved by affording both MSHA and the mining community the flexibility to focus on the elimination and prevention of serious accidents and hazards free of the impediments of unnecessary and burdensome procedures. In contrast with this underlying philosophy, several other bills have been introduced in the 98th Congress to remove surface mining operations from the jurisdiction of the Mine Safety and Health Administration ("MSHA"). The China Clay Producers do not support these bills.

*/ China clay is a valuable raw material for many industries. Its principal use is in paper, both as a coating and as a filler, but it also has a wide variety of other uses, including white-ware (porcelain, electrical insulators, plumbing fixtures, etc.), certain refractories, medicines, and as a filler for rubber, tape, plastics, insecticides, and many other products.

The China Clay Producers are convinced that responsibility for enforcement of mine safety and health should remain consolidated under MSHA. MSHA is clearly the superior forum for the regulation of mine safety and health because of its demonstrated expertise and its existing organizational capacity. MSHA's exclusive concentration on these issues in both surface and underground operations has allowed it a unique opportunity to become fully versed in the complexities of mining safety and health. Complementing this wealth of experience is an institutional framework specifically tailored for the mining industry. Consequently, the China Clay Producers agree that the proper path for regulatory reform lies in revising the Act to give MSHA an effective instrument to ensure the safe and productive operation of American mines, rather than exempting certain surface mining operations from MSHA's jurisdiction.

As surface mining companies now subject to regulation by MSHA, the China Clay Producers have first-hand experience with many of the enforcement problems that have resulted from the awkward regulatory structure established by the Act and which prompted the introduction of S. 1173. The following statement will discuss these enforcement problems and the ways in which pending legislation can improve the regulation of mine safety and health.

Mandatory Citations and Penalties

Within the narrow confines of the Act's detailed system of mandatory citations and penalties, MSHA has attempted to

strike a balance between the rigors of the penalty system and the realities of mining operations. Most notably, MSHA implemented a substantially revised civil penalty scheme which includes a standard, minimum/penalty for non-serious violations which are abated in the prescribed time period. 30 C.F.R. § 100.4. However, constrained by the Act's rigid and inflexible structure, MSHA has little remaining latitude to initiate further improvements in the regulatory process. This is particularly true with respect to the statutory requirement of mandatory citations.

Under the current statutory scheme, a MSHA inspector must issue a citation for any violation of the Act or any violation of a rule, regulation, or standard promulgated pursuant to the Act. These provisions deprive an inspector of the discretion to refrain from issuing a citation for a non-serious violation, or for a violation that is abated immediately, or for a violation that the operator has itself brought to the inspector's attention to obtain the inspector's advice on the best way to remedy the violation. Thus, instead of promoting mine safety and health, the rigidity of the Act's system of mandatory citations and penalties accomplishes precisely the opposite result by creating an adversarial relationship between MSHA inspectors and mine operators which inhibits an operator's incentive to solicit the inspector's advice concerning health and safety compliance.

S. 1173 proposes to eliminate mandatory citations and penalties except for "significant and substantial" violations as defined in Section 4(b) of the bill. By eliminating the mandatory citations for minor violations, S. 1173 would permit MSHA and mine management to focus on real hazards at the mine, thereby enhancing the health and safety of miners. The China Clay Producers fully support this approach.

It should be noted that as currently drafted the bill contains a defect which should be corrected to effectuate fully the legislative intent. Although Section 4 of the bill clearly intends to eliminate mandatory penalties for violations which are not "significant and substantial," the current version of the bill fails to amend Section 110(a) of the Act which mandates a civil penalty for all violations of mandatory safety and health standards. Unless Section 110(a) is suitably amended, all "notices of violation" will result in mandatory civil penalties. In contrast, S. 1173 appropriately amends Section 110(b) to indicate clearly that failure to take timely corrective action after the issuance of a "notice of violation" will result in an additional civil penalty for failure to abate. This amendment is in keeping with the overall intent of the bill to allow operators to correct minor deficiencies prior to the imposition of penalties. However, amendment of Section 110(b) alone will not alter the present Act's automatic penalties for even the most trivial violations.

Mandatory Health and Safety Training

S. 1173 would enhance significantly the ability of operators to provide meaningful and responsive training to miners unfettered by arbitrary requirements for minimum hours of instruction. As such, it would eliminate the present "paper exercise" which causes both MSHA and mining companies to become embroiled in the details of training plans while sometimes losing sight of the actual preparedness of miners for their assigned tasks. */ In contrast to the Act's current requirement that new surface miners receive a minimum of 24 hours training, Section 5 of the bill would require "such training as the Secretary ... determines is necessary and appropriate for the particular tasks performed by the miners and the conditions of the particular mine." The amount and timing of annual "refresher" training would also be determined by MSHA according to the same criterion. Moreover, S. 1173 also permits new miner and refresher training to include "on-the-job training conducted during actual production and under the close and continuous supervision of an experienced miner qualified to supervise such training." The bill's departure from the rigidity of the current Act would allow operators to tailor instruction to the specific needs of the miners at a particular mine. This approach is a significant advance

*/ See Interview with Ford B. Ford, Assistant Secretary of Labor for Mine Safety and Health, [1983] Mine Safety & Health Rep. (BNA) 16 (June 1, 1983).

over the current system and is strongly endorsed by the China Clay Producers.

Annual Inspections

The China Clay Producers strongly support S. 1173's provision eliminating the current requirement for two annual inspections at every surface mine. The requirement for two mandatory inspections at each mine strips MSHA of its flexibility to target scarce inspection resources against facilities with the most serious records of noncompliance. In addition, the current Act fails to provide mine companies with an incentive to maintain an excellent safety record or to reward mine companies for an outstanding performance on an inspection. In contrast, giving MSHA flexibility in allocating its inspection resources and fashioning criteria for conducting inspections at surface mines will allow a more efficient use of the agency's resources while encouraging operators to make additional efforts to conform to MSHA standards.

Consultation and Assistance Visits

S. 1173 would allow the Secretary to render "consultation and assistance" to assist mine operators in meeting the requirements of the Act and to improve safety and health at the mine. These consultation and assistance visits would not be considered an inspection or investigation and, except in cases of imminent danger, no enforcement action could be taken as a result of any consultation and assistance visit. This approach

would provide legislative clarity by explicitly allowing the Secretary to conduct visits to mine sites without implicating all of the mandatory requirements associated with an inspection. At present, MSHA has taken steps to provide on site assistance, but full realization of this potentially important regulatory technique is hampered by lack of an unequivocal legislative endorsement.

The concept of consultation and assistance visits is highly laudable and is supported by the China Clay Producers. This device will allow a freer interchange between operators and MSHA inspectors, resulting in increased awareness by both parties of regulatory standards and the practical problems of compliance. However, the China Clay Producers suggest that this facet of the bill be refined in several respects.

First, the bill allows MSHA to initiate consultation and assistance visits. This approach appears to be inconsistent with the non-investigatory and non-adversarial purpose of the consultation and assistance mechanism. In addition, the value of an assistance visit could be seriously diminished if the operator were unprepared to participate fully. Such a situation is likely if MSHA, rather than the operator, initiates the visit. As such, S. 1173 should be amended to allow the operator alone to initiate such a visit.

Second, the bill directs MSHA to ensure "meaningful participation" by miner representatives in the consultation

and assistance effort. This requirement may, as a practical matter, be burdensome and disruptive of work routines. Moreover, it is unclear whether this provision would entitle miners to "walkaround pay." If it would, this factor could persuade some operators to forego consultation and assistance visits because of the attendant costs.

Finally, the bill specifies that MSHA is not bound by advice it has given an operator during the course of consultation and assistance at a mine; this is unfair to mine operators who should be able to rely on MSHA's advice. Accordingly, the bill should make such advice binding on MSHA until MSHA formally notifies the operator of a change in its advice.

Additional Areas for Reform

The adversarial relationship created by the Act's system of mandatory citations and penalties is exacerbated by the imposition of sanctions which are frequently disproportionate to the underlying infraction. Under the present language of Section 104(d)(1) of the Act, a finding that a violation is "significant and substantial," coupled with the additional finding that the violation was caused by an operator's "unwarrantable failure to comply" with a mandatory standard, will trigger the issuance of a withdrawal order and closure of the mine. MSHA initially interpreted the Act so that all violations were "significant and substantial" unless the violations pertained to a purely technical requirement, such as record keeping, or the

violation posed a source of injury that had only a remote or speculative chance of happening. As a result of this interpretation, numerous and costly closure orders were issued based on insignificant violations of the standards.

MSHA's interpretation was challenged by the mining industry before the Federal Mine Safety and Health Review Commission (the "Commission"). In National Gypsum Company, */ the Commission rejected MSHA's interpretation and provided an interpretation in accord with the overall statutory scheme. Consistent with the Commission's interpretation, Section 4(b) of S. 1173 would incorporate this settled definition into the Act and provide that:

"[s]ignificantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard" means a violation of this Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, that based on the particular surrounding facts, constitutes a condition or practice which is reasonably likely to result in an injury or illness of a reasonably serious nature.

Statutory clarification of the "significant and substantial" standard will, however, only partially resolve the imbalance between underlying violations and associated sanctions. In addition to the difficulties initially presented by MSHA's interpretation of "significant and substantial," the statutory phrase "unwarrantable failure to comply" has also

*/ National Gypsum Company, 2 M.S.H.C. (BNA) 1201 (1981).

been interpreted to provide an extremely low threshold for liability. The phrase has been equated with ordinary negligence. */ Under Section 104(d) of the Act, an inspector's finding that a "significant and substantial" violation is attributable to a mine company's "unwarrantable failure to comply" with a mandatory health or safety standard will automatically result in a closure order if another violation is found on a follow-up inspection. Because the "unwarrantable failure to comply" is equated with simple negligence, closure orders frequently result in which the severity of the sanction bears no true relationship to the conduct of the mine company. In order to strike a fair balance between the underlying violation and the related penalty, the "unwarrantable failure to comply" standard should also be redefined so that it only applies to operator conduct which involves gross negligence or recklessness.

*/ See, e.g., CF&I Steel Corporation, 2 M.S.H.C. 1945, 1947 (FMSHRCJ 1982) ("Unwarranted failure occurs where the violative condition is one of which the operator had or should have had knowledge, or which the operator failed to correct through indifference or lack of reasonable care.")

CONCLUSION

The China Clay Producers support the basic provisions of S. 1173 and urge that the Committee incorporate the preceding recommendations and favorably report the revised bill.

Submitted by

SUTHERLAND, ASBILL & BRENNAN

Counsel for China Clay Producers

July 26, 1983

STATEMENT ON S 1173
AND ITS COMPANION BILL HR 3338
TO THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
BY
RAY B. HUNTER
EXECUTIVE DIRECTOR
CALIFORNIA MINING ASSOCIATION

JULY 26, 1983

Mr. Chairman and Members of the Subcommittee:

My name is Ray Hunter. I am the executive director of the California Mining Association.

The California Mining Association supports Senator Don Nickles' bill S 1173 and urges passage of this important mine health and safety legislation and its companion bill HR 3338.

The California Mining Association is a trade association comprised of over 100 major mining companies in California and the suppliers of goods and services to that industry.

The mining of \$1.7 billion of non fuel minerals placed California as the top producer in the nation in 1982.

California miners believe enactment of S 1173 will benefit MSHA's basic objective of assisting the mining industry reduce accident and injury rates as it will provide additional flexibility to work with the mining community. Legislation such as S 1173 and HR 3338 does not impact the basic enforcement structure of the existing statute. It does, however, specifically authorize MSHA to provide on-site consultation and assistance to operators. Therefore, if enacted MSHA would have the tools to "force compliance", if necessary, as well as work with operators who need assistance.

Currently, the 1977 Mine Act requires MSHA to inspect all surface mines twice annually. The legislation MSHA proposed to support would allow Secretarial discretion in determining the number of inspections at surface mines. MSHA would promulgate regulations to establish the criteria to be used in determining the number of inspections at surface mines.

We believe this provision would allow MSHA to use its resources more effectively and efficiently. MSHA has not been able to complete 100 percent of the required surface mine inspections in the metal/nonmetal area. Therefore,

-2-

for several years, MSHA has been "prioritizing" its resources, based on health and safety records of metal/nonmetal mines. Further, under the existing statute all mines are treated equally, regardless of their safety and health record. We believe Secretarial discretion is needed to ensure that those operators with high accident and injury rates come into compliance as well as encourage operators with effective safety and health records and programs to maintain them.

This proposal would not affect the mandatory four annual inspections of underground mines.

This legislation would permit the issuance of notices of violation for less than serious violations. Currently, the 1977 Mine Act requires MSHA to issue citations and assess civil penalties for all violations found.

In 1981, MSHA promulgated final civil penalty rules which permitted the issuance of a \$20 single penalty assessment for less than serious violations if corrected within the abatement time. This provision was promulgated as it was realized that there are violations which are not reasonably likely to result in reasonably serious injury or illness. However, in order to comply with the statute, MSHA was required to assess a penalty. These civil penalty rules have been operative for over a year and we believe they are effective. We believe that the legislative proposal to permit the issuance of non penalty notices for less than serious violations is a natural outgrowth of the existing rules and would further encourage operators to comply with violations noted within the set abatement time.

The mandatory training provisions of the 1977 Mine Act require, among other things, 24 hours of training for new surface mine workers and 8 hours of annual refresher training. The legislation would eliminate the 24 hours of new surface miner training and 8 hours of refresher training requirements as well as allow

-3-

on-the-job training. In lieu of the mandated hours mentioned above, the legislation would allow operators to develop training programs which are as closely as possible related to the actual needs of their employees. We believe this additional flexibility would result in more effective training for new surface mine workers and refresher training for all workers.

This legislation would not impact the mandatory 40 hours of training for new underground mine workers.

The 1977 Mine Act provided MSHA general authority to provide technical assistance (Section 502). The legislation would specifically allow MSHA to provide industry consultation and assistance during production hours. This provision would give MSHA and mine operators additional incentive to work together in solving health and safety problems before they become hazards.

Lastly, this legislation would eliminate from MSHA's jurisdiction State and locally owned and operated mines. As many states have their own safety and health programs and others would be covered by OSHA state plans we believe that eliminating these operations from MSHA's jurisdiction would reduce unnecessary government regulations without adversely affecting the safety and health of these workers.

Your support of this legislation would be greatly appreciated.

Thank you.

National Constructors Association

Submission for the Record

Subcommittee on Labor

Committee on Labor and Human Resources

United States Senate

July 26, 1983

Mr. Chairman and Members of the Subcommittee:

The NCA is made up of approximately 50 of the largest U.S. firms engaged in the construction of large-scale industrial and commercial facilities in the United States and abroad. Worldwide recession and depressed market prices for mine products have severely limited the volume of construction work on mine property. However, many of our members have done this surface construction work in the past and will continue to do construction work on mine property in the future. For that reason Mine Safety and Health Administration regulation of our construction work on mine property continues to be a major concern of our member companies.

I would like to interject at this time that we applaud the efforts of Undersecretary of Labor Ford B. Ford to identify the critical areas of concern in the application of the Mine Safety and Health Act. Equally, we appreciate the attention this Committee has given to the problem, and we hope it will be able to take positive action in the near future. We are concerned, however, that nowhere in the legislation being addressed today (S 1173) are the unique problems of the construction industry considered. We

Subcommittee on Labor
July 26, 1983
Page two . . .

would like to point out some of those unique problems so that the Committee may explore ways to remedy them. We of course stand ready to assist in this process in any way possible.

Under the provisions of the Mine Safety and Health Act of 1977, all independent construction contractor activity performed on the surface of mine-owned property falls under the jurisdiction of the Mine Safety and Health Administration (MSHA). This mine-owned property may consist of only a few acres or hundreds of square miles. The law does not distinguish between construction which is part of the mining process and construction which has nothing to do with mining and which involves no exposure to mining hazards. In fact, MSHA has jurisdiction on mine-owned property even if there is no mine present.

The problem does not stop there. Under the 1977 law, MSHA standards and enforcement procedures apply to the construction of facilities which, although not physically located on mine-owned property, are intended for eventual use as ore-handling or processing facilities.

We recognize the unique safety and health hazards associated with underground mining and share Congress' concern for the well-being of the workers subjected to those hazards. Certainly recent disasters in underground coal mines point to the need for vigilance in MSHA's regulation of the mining industry. We do not, however, see any similarity between underground mining hazards and those associated with above-ground construction activities. Further, it is our concern that the application of the MSH Act to surface construction operations may actually be jeopardizing the safety of the very workers it should be protecting.

Subcommittee on Labor
July 26, 1983
Page three . . .

The safety of the construction worker may well be jeopardized by inexperienced MSHA inspectors with no construction standards to guide them operating under an inappropriate agency. More importantly, the mine workers themselves should be concerned with the fact that limited MSHA resources are being pulled away from their underground mines to monitor construction activity.

Some background information on the construction industry may help demonstrate why we believe MSHA jurisdiction over surface construction activities is both inappropriate and potentially dangerous.

NCA members employ a wide variety of skilled tradesmen under collective bargaining agreements negotiated with the unions comprising the Building Trades Department of the AFL-CIO. They include bricklayers, carpenters, electricians, laborers, etc. Each one of these skills may be needed in a given construction project for six days or six months. The actual workforce changes continually as the needs of the job change. Average manpower turnover is 300%. Because of the temporary nature of the employment, special safety programs have been designed to protect the workers. OSHA itself has a Construction Advisory Committee and Special Assistant for Construction to handle the unique needs of the industry.

Mr. Chairman, as I mentioned earlier, we are vitally concerned with the safety of both miners and construction workers. By construction workers we mean building tradesmen who are employed solely for construction work above ground. In fact, on a typical construction site located on mine property, there is no significant if any contact between those construction workers and employees engaged in the actual mining process. Moreover the

Subcommittee on Labor
July 26, 1983
Page four . . .

actual construction site and mine location may be miles apart. Contracts routinely specify separate access routes, eating places, and restroom facilities for our construction workers.

Wherever surface construction workers would be exposed to the unique hazards of underground mining, we fully agree that it is appropriate -- in fact essential -- for the Mine Safety and Health Administration to exercise jurisdiction. After all, in some instances construction work on mine property is directly related to the mine process. Wherever that is the case, MSHA jurisdiction is appropriate. However, the construction activities we have discussed do not fall in this category. They expose the worker to none of the hazards characteristic of underground mining which led to the Mine Safety and Health Act of 1977. In fact, they are identical in every detail to work performed off mine property and accordingly belong, with most other construction activity, under the jurisdiction of the Occupational Safety and Health Administration.

We believe that MSHA lacks standards appropriate for the construction industry, and that it has done little to ensure the safety of our construction workers.

For example, the NCA has in previous testimony before this Committee (March 12, 1981) cited numerous instances of MSHA inspections which failed to acknowledge serious potential construction hazards. MSHA officials have inspected our projects, concentrating on such items as drainage, air quality, and self-rescue programs. They focus on unsafe conditions potentially causing cave-ins or other hazards which statistically cause the most deaths and injuries in mining. These inspections do not address the hazards of surface construction.

Subcommittee on Labor
July 26, 1983
Page five . . .

OSHA inspectors, on the other hand, are concerned with the safe construction of instrumentation, piping, and support systems. They review Safety Belt programs and look for hazards which might cause, for example, a fall, which is statistically the leading cause of death in construction work. In short, they are familiar with the construction industry and target their inspections on the safety problems common to that industry.

It is clear to those of us in the construction industry that sending mine inspectors to examine surface construction projects makes no more sense than sending OSHA inspectors into a deep shaft coal mine.

The NCA, the Building Trades Department of the AFL-CIO, and other construction industry groups have been in agreement on this issue for many years now. Union and management in the construction industry have agreed that MSHA jurisdiction over surface construction is unproductive, unnecessary and potentially dangerous.

Why then, does this policy continue?

A variety of excuses are offered.

For example, much has been made of the fact that MSHA plans to adopt OSHA's construction standards for work performed above ground. The mere fact that MSHA adopts OSHA's construction standards will hardly solve our industry's problem. If anything, that confirms that OSHA, rather than MSHA, is the agency which should regulate surface construction. Moreover, even if in fact MSHA does initially adopt OSHA's construction standards in their entirety, there is no assurance that these standards will remain the same or that after years of changes will be enforced the same. Additionally,

Subcommittee on Labor

July 26, 1983

Page six . . .

we would still face the problem of separate administrative procedures, penalty systems, and review procedures.

Discussions with interested parties in government, industry, and labor have revealed a surprising agreement that the present system is unacceptable. However, congressional authors of the 1977 Act as well as those representing the interests of underground miners are hesitant to allow any change in the law. They view legislation to amend the Act in any way as a potential threat to its integrity. In defending their legitimate concerns for the safety of miners they continue to bar changes which would likely benefit the safety of all workers on mine property.

The legislation (S 1173) under consideration today would allow greater flexibility for those administering the Act and would provide limited relief to those in the construction industry.

For example, it is bad enough that a construction contractor working on mine property has to cope with inappropriate standards, inexperienced inspectors, unnecessary paperwork and reporting requirements. The Act presently requires the imposition of a penalty on that contractor for any "violation" -- even though that "violation" poses no risk whatsoever to the construction worker. Moreover, the mine inspector is prohibited from providing consultation and assistance visits which might be extremely beneficial to the contractor and his employees working on that project. Clearly the elimination of mandatory penalties, authorization of consultation services and revision of training standards would provide some benefit to an industry as mismatched to its regulator as is the construction industry. But all these changes, though they certainly have merit, avoid the essential question of the propriety of MSHA jurisdiction over the construction industry

Subcommittee on Labor
July 26, 1983
Page seven . . .

in the first place.

On the other hand, the arguments for OSHA jurisdiction over surface construction on mine property are many.

The change would represent an efficient and intelligent allocation of the Department of Labor's limited resources. OSHA has in place an extensive set of standards which govern construction. MSHA does not. OSHA inspectors are familiar with the hazards of commercial and industrial construction. MSHA inspectors are trained to deal with the hazards involved in underground and surface mining and milling. MSHA inspectors are neither trained nor skilled in construction safety or the techniques and practices of the construction industry.

The majority of commercial and industrial construction done on mine property is performed by contractors and employees who have been trained to perform their tasks pursuant to OSHA standards. If MSHA developed its own set of regulations concerning such work, or even if it adopts the safety regulations that have been developed by OSHA, there is a danger of inconsistent interpretation of standards promulgated to deal with identical hazards. Employee work patterns would still have to vary depending on whether they were working on mine or non-mine property. The efficiency of the employees would certainly suffer and their safety would be jeopardized as well.

Finally, to train MSHA personnel in construction industry safety practices, with which OSHA is already familiar, would be an unnecessary duplication of effort. Extensive supplemental training of MSHA enforcement staff, management and safety personnel, and the workers themselves, would

Subcommittee on Labor
July 26, 1983
Page eight . . .

be time-consuming and costly. By contrast, OSHA's staff is experienced and capable for this enforcement duty. Contractors and their employees would need no additional training to comply with OSHA regulations.

Allowing OSHA jurisdiction over surface construction projects on mine property would efficiently allocate government enforcement resources, would avoid the inconsistent enforcement of safety standards, and would restrain a rise in construction costs. We hope this Committee will recognize these important facts. We believe OSHA is the appropriate regulatory agency for surface construction wherever it may occur, and urge this Committee to affirm that jurisdiction as part of legislation being considered today.

TESTIMONY

OF

ROBERT H. QUENON
CHAIRMAN
BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

AND

PRESIDENT AND CHIEF EXECUTIVE OFFICER
PEABODY HOLDING COMPANY, INC.

BEFORE THE

SUBCOMMITTEE ON HEALTH AND SAFETY
COMMITTEE ON EDUCATION AND LABOR

MARCH 8, 1983

ON

COAL MINE HEALTH AND SAFETY

My name is Robert H. Quenon. I am the Chairman of the Bituminous Coal Operators' Association, Inc., (BCOA) and President and Chief Executive Officer of the Peabody Holding Company, Inc., the parent company of Peabody Coal.

The BCOA is made up of firms whose represented employees are members of the United Mine Workers of America (UMWA). Our member companies range from the largest coal companies to some of the smallest. One of the major functions of BCOA is to represent its members in national negotiations with the UMWA, and it also takes a lead role for the coal industry in matters of health and safety.

Peabody is the Nation's largest coal producer. It operates 37 mines which produced almost 58 million tons in 1982. Of our total workforce, 7,200 are surface miners and 6,200 work underground.

My testimony today will be in two basic parts. Part I will be an overview of an appropriate safety policy for coal. The second part will address regulatory and legislative reforms that would be consistent with that safety policy.

PART I - SAFETY POLICY FOR COAL

In Part I, I want to make four points:

1. The coal industry is committed to a continuing improvement in the safety and health of our employees.
2. The Federal Mine Safety and Health Act has had a significant impact on keeping coal mines in a safer condition than previously.
3. The effectiveness of the stern enforcement strategy by the Mine Safety and Health Administration (MSHA) has probably reached its optimum level, suggesting that other methods for stimulating improved safety in coal mines would be appropriate along with the enforcement aspect of MSHA's responsibility.
4. We believe that further progress depends on a willingness by all concerned parties, management, labor and government, to cooperate with one another as we carry out our respective roles.

Coal Industry Commitment

The coal mining record in health and safety since 1969 is one of continuing improvement. The fatality rate, for example, has dropped from .17 per 200,000 hours worked in 1969 to .06 in 1982.

Records indicate BCOA member companies have consistently been ahead of the industry generally. The number of fatalities at BCOA companies, for example, has declined from 100 in 1969 to 41 in 1982, even though employment increased by approximately 35,000 people.

The record, obviously, is unsatisfactory when measured against the goal of zero fatalities. But, it does indicate that the industry has accepted its responsibility in the health and safety area, and responded positively.

In BCOA, for example, our commitment provides for several major health and safety efforts. I will mention two.

We have established, as a contractual commitment, a Joint Industry Health and Safety Committee composed of three safety and health experts appointed by BCOA and three by the UMWA. The Joint Committee has the general charge of addressing health and safety matters of importance to the industry. It is also charged specifically with consulting with MSHA and the Department of Health and Human Services on regulatory matters. While the individual approaches of the members may differ there is consistent agreement on the overall goals and often on specifics.

For example, in response to recommendations based on Joint Committee investigations, MSHA has revised the application of standards for installation of cabs or canopies on mining equipment, and for illumination of working places, resulting, we believe, in improved miner safety. Field tests of self-contained self-rescue devices conducted by MSHA in cooperation with the Joint Committee resulted in a reconsideration of the MSHA conclusion that the normal deployment system would be for miners to wear or carry the devices. This was a positive development leading to a more acceptable and practical deployment system.

We also have a Joint BCOA/UMWA Training Committee which has just finished revising its training program for UMWA health and safety committee members.

That program is designed to improve the performance of the committee members through a joint training effort. In 1981, one of the segments of the program—health and safety grievance handling—won an international award for excellence. Involvement of joint committee members in the formative stages of development of the mandatory training regulations led to endorsement of the proposed regulations by both parties.

BCOA companies also have training commitments under the National Bituminous Coal Wage Agreement, which address both health and safety and skill development. In addition, most companies have extensive training programs for the various managerial levels with particular emphasis on frontline foremen.

For example, Peabody's training efforts, whether for represented or supervisory personnel, have as a top priority to instill professionalism on the job. This is particularly important for supervisors who must deal with an increasingly sophisticated human, technological and governmental environment. While there are no generalized rules applicable to all companies, it is increasingly evident that there is a positive correlation between a result oriented comprehensive training effort and improved health and safety.

Having said this, there is one other point which should be made. For any corporate program to be successful, it must have the commitment of top level management. This is especially true in matters of safety and health. Top management must effectively communicate its determination to its employees. Only in this manner will we achieve the desired results.

The Impact of Law

The 1969 Act was and is designed to prevent accidents caused by physical conditions in coal mines. Among other matters, disaster-type accidents, falls of roof, and the work environment are addressed, standards are set, and enforcement procedures written. There is no doubt the overall effect of these things has been beneficial.

However, we believe that the effectiveness of the enforcement strategy has reached its optimum level. In order to move forward in accident prevention we must build upon the present initiatives with new approaches such as:

1. the development and introduction of new technology to remove miners from high risk situations;
2. continued research and development in production technology with built-in safety factors;
3. the intensification of management initiatives to instill the safety habit in every employee so that accidents caused by so-called human errors can be reduced significantly.

These basic problems cannot be remedied solely by the enforcement strategy. Progress is mainly dependent upon management's efforts, with the full cooperation of the work force and its institutions, and upon the recognition by MSHA of the inapplicability of its present approach in addressing the human factor.

As we move beyond our current plateau in the safety area, we must question the narrow approach of law and regulation. We cannot apply the mandate of law to accident causing situations clearly not amenable to such an approach. To do so would divert resources from the types of safety programs that are effective in these situations.

Communication, Coordination, Cooperation

This analysis leads to one inescapable conclusion — given the need for law there is also a need for a cooperative attitude, rooted in mutual trust and respect for the role each of us must play in the safety effort.

We believe our record and our commitment to safety require those with whom we deal to look upon us as an ally, an industry committed to the safety goal. This does not suggest universal agreement, only a recognition that our goals coincide with all others interested in the well-being of the coal miners of this nation.

We recognize the political implications involved in this position. It is always comfortable to hide behind the perceived realities of the past, to take the politically safe road of confrontation, to shy from meeting the challenge of a system based on trust and respect in favor of the security of the "black hat, white hat" syndrome. We think it is time to leave this historical baggage behind.

-5-

There is tangible evidence of the benefits of a cooperative attitude for safety. The various joint committees which I have touched upon before are indicative of that value. The communication between parties and the coordination of goal setting are indispensable elements of a successful approach to accident reduction.

In written testimony to this Committee last year, ECOA set forth what it believed to be the roles of each party — management, labor and government — in the safety effort. I think it is useful to restate our position.

MANAGEMENT

Management is accepting its primary responsibility in the safety area, by implementing and managing those programs necessary to fulfill that obligation.

This means effective employee training, safety awareness programs, emphasis on supervisory responsibility in the safety area, and the provision for machinery and equipment that will operate safely with minimum risk to employees.

At Peabody Coal, for example, our safety effort is three pronged.

First, we build into our mining plans and work practice compliance with the law and regulations. This becomes the minimum foundation of our safety effort.

Second, we conduct extensive training programs for miners and supervisors in the implementation of laws and regulations, and also address matters that cannot be addressed effectively by regulation. Our overall objective is to obtain good safety practices at all working locations.

Third, and perhaps most important, we run an aggressive accident analysis program designed to anticipate all accidental occurrences. The analysis covers more than just those occurrences that result in injuries. From a punctured tire to a roof fall, we identify problems and devise methods to prevent them. The cost of accidents in human and economic terms makes no business sense.

LABOR

The employees at a given coal mine and the labor organization which may represent them must accept the responsibility to work safely and to use their institutional actions to further the ongoing safety effort.

There are both tangible and intangible aspects to the process of improving safety and health. One of the more constructive efforts underway is the joint training program to improve the professionalism of safety committee members. Beyond that, we ask labor to join with management in recognizing that safety should not be treated as a traditional adversarial labor relations issue. Finally, we must continue to stress the importance of the individual to the overall safety effort.

The President's Commission on Coal had the following message for both Management and Labor:

"...shared responsibility by management and labor for improving safety of underground mining includes the acceptance of the principle that coal companies not prepared to operate safe mines and miners not prepared to observe safe mining practices have no place in the industry."

GOVERNMENT

Federal and state government agencies concerned with health and safety must enforce the law and regulations efficiently, effectively and fairly in a manner consistent with the intention of the law, which is to reduce and eliminate accidents.

This means that enforcement resources should be directed objectively at those elements of the mining process with the greatest degree of risk and toward continuing problems which are amenable to the enforcement approach. Regulations should be directed at real safety concerns. Any promulgation of new regulations should be made only after full opportunity for meaningful and credible comments by all interested parties. It is only after those comments are considered that a decision as to the need for feasibility of regulations should be made.

Coal mine accidents can be prevented. All participants in the safety effort have embraced this goal. The concerned cooperative attitudes of the parties to the safety effort is a critical element of its success.

Enforcement remains as an important safety tool, but it is a tool, not an end in itself. We recognize that law and goal-oriented regulations are essential elements of what we need for the task of improving safety. We also think that these laws and regulations can be updated, not only to preserve their intended effect, but also to make them a more effective part of a truly comprehensive accident prevention effort.

PART II - REGULATORY AND LEGISLATIVE REFORM

As we have discussed so far, government is only one part of the accident prevention effort. However, it is a pervasive force in the coal industry, especially in the safety area. Therefore, we all spend a great deal of time thinking about the appropriateness and effectiveness of the government. Oversight hearings such as this are a useful forum for discussing how to improve the regulatory and enforcement effort.

There are three basic areas to touch upon here:

1. the MSHA reorganization which has been in effect since last spring;
2. the comprehensive review of the regulations which is now well underway;
3. the suggestions that have been made regarding statutory changes.

Actions Already Taken

The reorganization of MSHA, which gave to the district managers all the tools for enforcement, training and the total safety effort has been in place since last spring. Conceptually, this shifts the emphasis to the overall goal of improving safety with enforcement being just one component of achieving that goal. It is a healthy step in the proper direction.

It is perhaps too early to pass total judgment on all aspects of the reorganization, but coupled with the fixed penalty approach for non-hazardous violations which are abated timely, it appears that more time and resources are available to concentrate on the more important safety problems in the mining environment.

Regulatory Reform

We are pleased that MSHA has undertaken a review of the mandatory regulations adopted under authority of the statute. The existing coal regulations probably are the most comprehensive and detailed of any set of health and safety regulations for any industry. Basically, those regulations are expansions of the interim standards set out in the 1969 Act, supplemented by regulations in other areas the Act directed the Secretary to address, and additional regulations covering matters the agency identified as potential problems.

Until now, no comprehensive review of the regulations has been attempted, although a changed coal industry has emerged in the thirteen years since the basic interim mandatory standards were written. The 1983 coal industry is characterized by revolutionary changes in technology, economics, ownership pattern, work force demography, and more significantly by new management perspectives. It clearly is time for a comprehensive review of the regulations to bring them in line with today's needs.

BCOA has been participating to the full extent possible in the rulemaking procedures. Using task groups of industry experts in specialized areas such as ventilation, roof control, and illumination, BCOA has developed detailed proposals for regulatory reform and presented them to MSHA. Our task groups were charged with reviewing each item in the regulations and developing proposed revisions which would provide improved safety, focusing on those current regulations which, in practice, detract from or fail to contribute to safety.

The philosophy we have employed in developing our proposed changes is not to simply strike regulations from the books, but to find better ways to achieve the objective intended by the regulation. Most regulations were drafted to address a perceived need in the mining environment. Unfortunately, they have not always met that need sensibly, efficiently or fairly. The proposals we made in November, 1982 are designed to improve the regulations for everyone's benefit. However, if a regulation does not address safety, we have proposed its repeal.

In addition to reviewing the standards, BCOA also has proposed regulations setting out a procedure for MSHA approval of the mine operator's plans, such as for ventilation and roof control. The Act currently requires these to be submitted to the Secretary for his approval. The procedure is defective because no independent review is provided in the event the Secretary withdraws or declines approval of the operator's proposed plan. In addition to establishing a means for independent review of the issue, the BCOA proposal would establish reasonable deadlines for MSHA and operator responses. This principle is of extreme importance to the coal industry. The present inequities can be remedied by regulation which will not change a single mandatory standard and in no way reduce MSHA authority to approve or disapprove an operator's plan. We believe MSHA's credibility and performance will be strengthened by a system in which its decisions are subjected to the scrutiny and reinforcement of an independent review.

Regulations are an essential part of the safety effort. To be effective, regulations must be a credible addition to safety. If they are not well drafted or conceived, their likelihood of being misunderstood or misapplied is increased, thereby diminishing the safety effort. If, however, we can make these regulations credible, they will be more easily understood and followed in accepted practice. This is a sound and sensible goal for regulatory reform. Even regulations based on sound concepts are not applicable in every mining situation. Ways must be found to apply these regulations effectively without crossing the line of counter-productive application.

An example of a sound concept which in application failed to meet its full potential for improving safety is the requirement for cabs or canopies to protect mobile equipment operators from roof falls. The interim statutory standard, based on industry testimony presented in 1969, authorized the inspector to require the installation of a cab or canopy on equipment where the height of the coalbed permitted such installation. The implementing regulation, adopted by MSHA's predecessor agency, failed to recognize the effect of such installation in thinner coal seams. In a departure from the statutory standard, the regulation ignored the coalbed height consideration except to invoke the requirement into progressively lower seam heights on an incremental time schedule. The mandatory schedule now calls for such installations in all coal mines regardless of height. In recognition of the counterproductive effect on safety, MSHA, by policy, has suspended enforcement of the regulation in thinner seams. Our proposal addresses the issue through a suggested amendment designed to balance the safety benefits of cabs and canopies against the adverse effects of reduced miner visibility and discomfort experienced using cabs or canopies on equipment in thinner seams.

The cab and canopies issue is an example of a regulation which forces technology. There are others, such as the self-contained self-rescuer and face illumination. We do not oppose, indeed, we support new technology which will improve the safety effort. Moreover, as such technology is developed it should be introduced and used on a rational basis. But to mandate such technology before its development creates the real potential for wasted effort, or worse, unanticipated safety hazards.

We believe our proposals are a proper combination of general and specific requirements—general whenever generalities are more appropriate, and specific where detail is called for. For example, we have proposed the same basic performance standards for the various mining systems, i.e., continuous mining, conventional mining, shortwall mining, longwall mining, and non-mechanical mining. We believe it would be inappropriate to single out any particular mining system for selective standards which could serve to retard the increased use of more efficient systems.

Legislative Reform

Pending the results of the regulatory review process, BCOA is not, at this time, urging statutory change. We do have areas where, if the Act were opened, we would seek improvements. The physical standards required by the Act are still a sound foundation for safety, subject to up-dating and improvement through the rulemaking process.

Our concerns would address the need to make the language and intent of the Act more meaningful and more consistently understood by all parties and to eliminate needless and costly delays in the compliance process. Some of these concerns may be addressed by the regulatory review. But, even if they are, it could be useful, at some point, to also improve the statute.

We would like to make clear our position on the legislative changes that have been raised by Assistant Secretary Ford as part of MSHA's budget proposal and to also mention another issue which seems to arise every year—MSHA jurisdiction for independent contractors.

We believe that the MSHA jurisdiction should include independent contractors performing work on mine property. We have taken this position very strongly in the past, and we believe that MSHA jurisdiction over such contractors should be continued. In addition, we believe that independent contractors should be, for purposes of the Act, held accountable as "operators" for their actions in dealing with health and safety conditions.

Assistant Secretary Ford has discussed the merits of better utilization of MSHA resources by authorizing MSHA to establish criteria for frequency of inspections. Any such criteria should address the allocation of resources among the various mining industries, normalized on a basis of safety performance. The criteria also should address the types and size groups of all mines, surface and underground, within each mining industry. Experience has shown a significant

disparity in the record of fatal accidents per hour worked among coal mines in different size categories. Fatal accident frequency is a good measure for allocating resources among the mining industries and among the type and size categories of mines within any given mining industry. More detailed performance related criteria also could be developed in an objective manner for direction on a mine-by-mine basis of the allocated resources within any given category of mines.

Mr. Ford also suggested the merit of penalty-free notices for non-serious violations which are abated timely. The current regulations have been revised to provide a fixed penalty for such violations. This change has proven beneficial by freeing both MSHA and industry safety personnel from the time-consuming exercise of penalty assessment conferences. In addition, it has focused attention on those types of violations which are likely to result in injuries, and encouraged prompt abatement. No diminution of safety has occurred, and the record has continued to improve since adoption of the fixed penalty provision in May, 1982. We believe the logical conclusion—penalty-free notices for non-serious infractions which are corrected, as provided in OSHA, would further free mine and agency personnel to focus on more serious concerns.

Mr. Ford has suggested the need for latitude in approving operator training plans, including reducing the mandatory number of hours for new entrants training and annual retraining.

We concur in the need for maximum flexibility. The most effective training deals with specific mine situations rather than generalized areas of concern. Moreover, such matters as course content, training methods, training duration, and training sites are best addressed by local officials. However, we believe the current number of training hours required for new entrants and for annual retraining has proven to be adequate and effective.

We also would encourage MSHA to maintain a high level of professional competence of its training staff. We have been concerned that the reorganization might diminish the perceived importance of training at MSHA. While there is no visible evidence of this as of now, the question remains of serious concern.

We concur with Mr. Ford that consultive visits by MSHA personnel could be beneficial provided a proper set of ground rules were established. Occasions will arise in which an operator would find the advice of an inspector useful in finding a solution to a special or unique safety problem if the inspector could be invited to the mine in an advisory capacity. To assure against abusive practices such mine visits should be specifically excluded from the inspections required by statute or by MSHA criteria, and such consultive inspectors should retain their enforcement authority regarding imminent danger situations.

Conclusion

To sum up:

The coal industry believes that all parties involved in coal mine health and safety must exert every effort to continue the improvements of the past decade. Each of us has a distinct and separate role to play in safety, and the ability to perform that role is enhanced if there is mutual trust, respect, and cooperation. We must aggressively manage our safety programs, train our employees effectively and benefit from government enforcement carried out in a positive manner.

PETER KIEWIT SONS', INC.

One Thousand Kiewit Plaza
Omaha, Nebraska 68131

June 24, 1983

Senator Donald L. Nickles
Chairman
Subcommittee on Labor
Senate Labor and Human Resources Committee
Room 4230
Dirksen Building
Washington, D.C.

Dear Senator Nickles:

I request that this letter be made part of the hearing record of the Labor Subcommittee of the Senate Labor and Human Resources Committee with respect to S 1173 which you introduced on April 28, 1983.

Peter Kiewit Sons', Inc. has interests in surface and underground coal as well as surface aggregate mining operations in the United States. We have reviewed the provisions of S 1173 and believe that it will make several needed and beneficial reforms in the Mine Safety and Health Act of 1977 (the "Act"). I would like to point out several provisions in the bill which are beneficial to the mining industry because they remove unnecessary or burdensome requirements, yet do not adversely affect the safety or health of mine employees.

Safety has always been a fundamental part of all of our operations. We support S 1173 because it will strengthen the many beneficial aspects of the Act. We particularly endorse the proposal to reduce the number of annual inspections to one each year for those surface mines which meet certain injury-rate criteria. This is reasonable for a company such as ours which has a good safety record. It will also serve as a incentive for the industry in general. Equally important, it will cut back on a number of unnecessary inspections, thereby allowing MSHA to conserve its resources for problem situations.

Penalties for violations of the Act or regulations promulgated thereunder should only be assessed in instances of significant and substantial violations. One major benefit of inspections under the Act is the encouragement of voluntary abatement of violations. In circumstances where violations are of a minor nature, but are readily corrected, the Act's intent is met without the addition of a mandatory penalty, which tends to get in the way of cooperation between mine operators and MSHA. We agree with Senator Nickles'

conclusion that there is "no need to punish employers and employees and consumers, for minor non-willful violations that no one could prevent and which are easily corrected when pointed out." The spirit of cooperation and encouragement of voluntary compliance which Assistant Secretary Ford has fostered over the past year and one-half will be reinforced by this change in the Act.

We have worked hard to foster a good working relationship with MSHA because that fits in our policy of providing safe working conditions for our employees. We support the provision in S 1173 which will encourage consultation and assistance visits by MSHA personnel upon the request of an operator. This should allow mine operators to discuss special aspects of their facilities and will foster a dialogue which will lay the groundwork for cooperative effort between mine operators and MSHA to improve mine safety.

Peter Kiewit supports efforts to improve the Act in light of experience gained working under its provisions. We believe that S 1173 fulfills this objective and urge that it be enacted.

Very truly yours,

PETER KIEWIT SONS', INC.



Robert E. Sample
Corporate Safety Director
Peter Kiewit Sons', Inc.

RES-TJF/dg

bc: Senator Donald L. Nickles
Room 113
Hart Senate Office Building
Washington, D.C.
Attention: Steve South

Senator GRASSLEY. Thank you, Senator Denton. I also want to thank each of the witnesses on this specific panel. I believe that we have created a very valuable hearing record today, and I want to thank each and every one who participated. The hearing record will remain open until August 12 for additional insertions, if anyone has anything to submit or correct.

The meeting is adjourned.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned.]

○